

# **The London School of Economics and Political Science**

## **Overcrowded as normal: Governance, adaptation, and chronic capacity stress in the England and Wales prison system, 1979 to 2009**

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## **Declaration**

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# Abstract

Why do public policy systems sustain chronic conditions despite general consensus that these conditions are detrimental to overall performance? The answer is because they are, in one way or another, *sustainable*. Systems find ways of sustaining manageable and acceptable equilibrium between demand for their services and their supply. Yet in doing so, they develop ways of coping with and normalizing situations of chronicness. This research is about chronic capacity stress (CCS) in a large and complex public policy system. CCS may be caused by excessive demand for services. It may also be caused by inadequate supply. Either way, it is a property of sustainable equilibrium between the two, and therefore must be understood in these dynamic terms rather than as just the product of one or the other. I examine overcrowding in the England and Wales prison system as an archetypal case of CCS. It starts with the assumption that the prison system should in theory be set up to deal with the demands made upon it. In doing so, it examines the way in which the system itself has coped with, normalized, and sustained crowding over the years. I have conducted in-depth interviewing with former ministers, top officials, governors, and other key actors, as well as extensive quantitative analysis covering three decades. I develop four inter-related themes as a part of a 'problematique' which explains why CCS is sustained: ambivalence towards rehabilitation, coping and crisis culture, benign resistance, and obsolescence and redundancy. Constrained autonomy of actors and their adaptive behaviours are key to understanding how the system sustains CCS, and how it is able to function despite CCS. Ultimately, I show how three groups of public policy theory – public choice, cultural theory, and governance – are vital aspects of an overall explanation, but that independently they are insufficient to explain why chronicness sustains, and therefore must be integrated into a more holistic, governance-style explanation. CCS can be seen as a function of governance dysfunction.

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I began this doctoral thesis in the summer of 2008, having worked in academic public policy research, from 2000 at the School of Public Policy at University College London (UCL), and from 2005 at the Public Policy Group at the London School of Economics (LSE). In many ways, therefore, this thesis embodies research skills and experience learned during that time, and in this sense, it is probably a culmination of the last ten years or so of my professional working life. As the title suggests, the thesis is about crowding and chronic capacity stress in the prison system. I have often been asked how I came to be studying such a subject, and there is no straightforward or poignant answer. The idea came to me whilst reading a National Audit Office report (NAO, 2005) which left me puzzling about how a prison system could be seen as overcrowded, yet at the same time, within its so-called 'operating capacity'. I should thank the NAO for delivering, albeit unwittingly, this kernel of a paradox, which has consumed my thoughts for the last three and a half years.

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Simon Bastow  
LSE, January 2012

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## Introduction

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*There is a curious unanimity, just a failure to make it happen. There is nobody who thinks that crowding doesn't matter, nobody who thinks you shouldn't provide a prison estate to deal with the adequate numbers, nobody who disagrees with the view that there are significant numbers of people [in prison] who shouldn't be there. And there is nobody who disagrees with the idea of providing appropriate alternatives to imprisonment if possible.<sup>1</sup>*

On a Friday in the autumn of 2009 I spent the day as an LSE researcher in the reception of Brixton prison observing the work done by prison officers to process prisoners in and out of the jail. As a local prison, Brixton holds prisoners on remand, on trial, or awaiting sentencing at courts across south-east London. Managing the constant movement of prisoners in and out is therefore a major part of the daily routine. On a busy day, the reception can process anything up to 80 prisoners in and roughly the same number out (equivalent to one tenth of the prison's capacity). The modern-looking vans of the prison escort contractors inch their way through the narrow Georgian gatehouse, and perform five or six-point turns in order to manoeuvre around the cramped space of the prison courtyard - one of many visible manifestations of the way in which ancient and modern combine to keep the system continually moving.

For each of the thirty-five prisoners going out to court that morning, staff carried out a full strip-search, bagged up the prisoner's case files and personal effects, prepared a prisoner escort record, and all of this went with the prisoner onto the Serco van waiting in the yard. Of those thirty five prisoners leaving Brixton in the morning, twenty returned to the prison in the evening. On their return, staff performed pretty much exactly the same procedure in reverse - a full strip-search, re-opening the bags of case files and personal property, returning essential items to the prisoner, and packing away the remaining property into black boxes and into the storerooms. For these twenty prisoners, officers were spending much of their morning packing up the files and property only to have to unpack the same files and property in the evening.

## *Introduction*

I wondered why it was necessary to do this when there was a relatively strong likelihood that most of those prisoners would return to the prison in the evening. Staff explained that the pressure on capacity in London local prisons, and the movement of prisoners around the London system, meant they could not guarantee that those leaving Brixton in the morning would return to Brixton in the evening. Court sessions may run late and vans may have to wait for the last prisoner in the group. In the meantime, available spaces at Brixton fill up with new prisoner intake, therefore displacing the morning's prisoners elsewhere. Also, prisoner escort contractors design their routes to be as cost-efficient as possible, and hence prisoners may be inadvertently displaced as part of the need to fill up vans on pre-set routes. The behaviour of other London local prisons can also have an effect. If Wandsworth decides to shut its gates for the evening, Brixton reception may have to take those prisoners that would have gone into Wandsworth, again displacing other Brixton prisoners who had not yet returned. In short, the risk of a prisoner not returning to Brixton in the evening meant that their files and property were bagged up and sent along with them, in order to avoid the trouble of having to reunite them with their property once they had left the prison.

It seemed that the difficulty too of locating prisoners once they had left Brixton also compounded this problem. There was no prisoner database which allowed staff an instant overview of where individuals had gone once they had left Brixton. This complicated the task of sending their property after them. Furthermore, the logistical systems involved were largely free of what we might expect as modern technology to aid the process of linking prisoners, their files, and their property. Prisoner property boxes were not electronically tagged. There were no van-compatible boxes which could be slotted into the vans without having to decant things back and forth between black boxes and plastic bags. (Prisoner case files were moved around in often sizeable piles of cardboard folders and loose-leaf, bagged up in a plastic sack with a tie around the neck). And staff relied largely on manual and handwritten registration techniques, with prisoner property information written in longhand in a large bound ledger. None of this was what one might expect from a modern logistical operation in the late 2000s.

At the end of my day in reception, the duty manager came to say good bye and good luck with the research. He said he hoped that I'd had got a good insight into the kinds of pressures which reception staff in a large London local prison have to cope with

on a daily basis. I felt that I had got an insight into a system which is expected to operate continually at high levels of capacity, and in a context which is inherently uncertain, often hazardous, and emotionally charged. Yet it was clear also that despite this, here was a system which had managed to sustain and, to a large extent, normalize striking levels of obsolescence and redundancy.

Staff on duty that day were well aware of the limitations of the process, and also well aware of the constraints of changing it. The patterns of prisoner movement in London were beyond the control of Brixton prison, they pointed out, and redesigning the process in Brixton would require redesign of the process across other prisons in the system. The lack of the modern technology was down to funding and decisions made way above their heads. They just worked with what they had. I suggested that changing the system would allow staff to be redeployed in more fulfilling ways around the prison, rather than (needlessly) packing and unpacking property all day. Even if this argument could be made, they explained, it would be difficult to get it past the union. They would see it as a threat. This would make the issue political, yet for ministers it would be seen as such a small operational issue that it would be unlikely ever to figure prominently on a minister's to-do list. From all angles, perceptions on the constraints of modernizing, even this small technical aspect of the system, made the problem appear beyond the gift of any one actor in the system to solve.

The peculiarities of the daily routine in Brixton reception may seem like a rather trivial vignette with which to start a doctoral thesis about crowding and chronic capacity stress in a prison system. Yet it illustrates in microcosm the key questions at the heart of this thesis. It shows first of all how a system can appear to be operating under stress at continually close-to-tolerance levels of capacity, yet at the same time, incorporate striking obsolescence and redundancy. All those working in the system can recognize the problems and the peculiarities involved. We are drawn to ask therefore how such problems and peculiarities sustain if everyone recognizes and acknowledges them as such. The response is that the people working in the system also recognize the constraints on doing anything about them. We begin therefore to see how systems work despite themselves: how they must adapt, find ways of getting by, coping, adjusting, and doing what is necessary to make things work one way or another. We also begin to see

how pulling on a seemingly innocuous thread can unravel a complex set of governance considerations which lie beneath a seemingly trivial problem.

This is a detailed study about one prison system, and the problem of prison crowding as an example of what we might call ‘chronic capacity stress’ (hereafter CCS). CCS depicts a sustained imbalance in a public policy system which puts pressure on capacity. It can be defined in terms of four aspects as follows:

1. A significant stress on the capacity of a policy system to respond to expectations and demands made on it;
2. This stress is sustainable over time, and can be managed as such, and therefore becomes chronic in the system;
3. This stress is a function of the way in which the system itself is governed and operates; and
4. This stress which is simultaneously both cause and symptom of dysfunction in the overall governance of the system

Why has crowding, as a classic case of CCS, persisted despite widespread unanimity that it undermines and disrupts the things which the system, by its own admission, has sought to do? Already there is a high degree of assumption inherent in this question, which readers will immediately pick up on. What evidence of ‘unanimity’? In what way does it undermine or disrupt? And what consensus is there anyway on what the prison system should seek to do? All of these questions are clearly large and important pieces of puzzle. And they are dealt with throughout the thesis. It is not possible to provide answers or evidence enough in this the first section of the Introduction. I therefore ask the reader to suspend disbelief at least temporarily. For at the heart of the research question is, I believe, something more fundamental anyway. Why and how do public policy systems sustain CCS? And how should we seek to understand characteristics of CCS in this systemic light?

## **The structure of the thesis**

Discussions on the theme of prison crowding over the decades have tended to accentuate either demand-side or supply-side worldviews. Demand-side views imply that crowding is the result of excessive demand for prison. The problem lies therefore in an over-filling of prisons, and the solution is seen in terms of finding ways to reduce the number of

people sent to prison. Supply-side views, on the other hand, imply that crowding is the result of insufficient supply of capacity. The basic problem with choosing sides in this way is that we run the risk of overlooking the fact that crowding must be seen as a property of the prevailing relationship between both, an outcome of the way in which demand and supply sides find a way of equilibrating with each other. As Shepsle and Bonchek (1997) remind us, the politics of public supply is as much about the production of public goods (*i.e.* the supply side) as it is about their consumption (*i.e.* the demand side) (p271). Thinking about crowding exclusively as a problem of excessive demand implies that there is nothing about the supply-side which impacts crowding. Similarly, thinking about the problem exclusively in terms of the system or supply-side implies that demand-side questions have little impact on the way the system thinks and operates.

As mentioned, this is a piece of research about one system – the prison system in England and Wales. It is therefore focused fundamentally on the supply side of the equation. It is not about wider issues of crime and punishment in society, neither is it about the intricacies of the law, sentencing, or judicial behaviour. It starts with a basic premise that a public policy system should be set up in such a way that it is able to meet the demands placed on it. Already this is a controversial premise from the point of view of those who argue from a demand-side perspective. Why should a prison system be set to meet demands made of it when those demands, in the eyes of many, are the wrong demands? This is a paradox which must be at the centre of any attempt to understand CCS in the prison system and the actors within. For the problem of what we expect from the system is constituent of the problem of how we set the system up in the first place.

Again, I ask the reader to suspend disbelief on this basic assumption that a public policy system should be set up adequately to meet the demands made of it. One way of challenging this assumption is to say that actually there are very few public services which are truly set up to meet prevailing levels of demands without some degree of supply-side constraint. Hospitals after all have waiting lists for patients. Schools have catchment areas which constrain supply of places. Welfare benefits have means-tested elements which demarcate thresholds eligibility. Why therefore should we expect prisons to be any different? Clearly, however, in all of these areas we must look at the nature of the equilibrium between demand and supply, and understand how it is that these equilibrium are able to sustain situations of CCS over time. What is it about the

system, be it health, education, welfare or prisons, which shapes and impacts the way in which demand and supply equilibrate? And in doing so, what are the aggravating and compensating dynamics involved? In large and complex public policy systems, these are large and complex questions. And they require in-depth analysis of the system as a whole.

Chapter 1 starts by asking how adequate is existing public policy theory in helping us to understand crowding as a symptom of CCS. I discuss three theoretical approaches – rational choice and strategic actors, cultural theory, and governance and New Public Management (NPM). I organize this discussion in a layered format which begins with individual actors and their rational behaviour, subsequently adding in cultural and institutional factors, and finally adding in broader whole-system factors relating to the way in which NPM has shaped priorities and outcomes in the prison system during the last thirty years. I argue that all three theoretical approaches have important aspects to contribute in explaining how and why CCS sustains in a large public policy system. In this sense, we need look no further for theoretical component parts of the explanation. However, each approach is insufficient alone to capture the systemic nature of CCS, which exists in an ever-changing environment and through time. A more holistic approach is required which allows us to integrate key aspects of these three approaches into one analytical whole.

In chapter 2, I set out the framework for this more holistic approach. I identify three inter-related analytical factors, which have been central to political science and public policy analysis for many decades now: value-based goals, system design, and interaction with environment. Four key relationships can be generated from these three factors. These relationships are:

1. How value-based goals relate to changes in the external environment;
2. How system design allows value-based goals to be realized;
3. How value-based goals are imposed on appropriate system design; *and*
4. How system design relates to changes in the environment.

Based on existing prisons literature, I examine key aspects of these four relationships and how misalignments between them may likely feed into sustaining CCS. In doing so, I build a ‘problematique’ – a visual depiction of aggravating and compensating relationships – to show how CCS may be seen as an outcome or function of prevailing

governance equilibria in the system. This provides the hypothetical basis for thinking holistically about the problem.

Chapters 3 and 4 develop some important aspects introduced in the *problematique*, relating particularly to the impact of managerialist change in the prison system over thirty years. Chapter 3 uses ‘quality-adjusted productivity’ as a proxy indicator for performance of the prison system. Expenditure on the prison system over the years has more than matched the increase in the size of the prison population, hence productivity has fallen. However, when adjusting for some basic indicators of quality, productivity shows a gradual increase from the mid-1990s onwards. I argue that managerialist features have played an important role in bringing about these improvements over the long term. Indeed, managerialism has had a ‘tightening’ effect on the system, allowing it to cope at close-to-tolerance levels of capacity and in a more ordered way. Paradoxically, however, managerialism has also had countervailing effects on the ability of the system to address fundamental goals around rehabilitation, and has also contributed to sustaining inefficiencies and obsolescence in the system.

Chapter 4 looks at role of standards in protecting the prison system against crowding over the years. Two standards have been central in this respect, Certified Normal Accommodation (CNA) and Operational Capacity (Op Cap). CNA has long been an input-oriented standard defining what prisons *should* be expected to hold, however for many years, most local prisons have operated well above CNA. Although it continues to serve as an ‘ideal world’ measure for an un-crowded prison system, it is also widely seen as obsolescent and devalued by the reality of crowding in the system. Op Cap, on the other hand, is an outcome-oriented standard defining what prisons *can* hold safely and decently. As a managerialist device, this standard has provided a basis for rationalizing and justifying stretch in capacity of the system. Both have been important to the system in different ways to different actors, and in combination have provided a hybrid means of control through counterbalance. Control through counterbalance has been an important legitimating basis on which the system has sustained and coped with crowding.

Up to this point in the thesis, I have talked in relatively abstract terms about the system, crowding, and CCS, and the *problematique*. But the driving forces which animate the system lie with the choices and actions of the individual actors in the

system. In order to explain CCS as an outcome therefore, it is important to understand the condition dynamically from the perspective of these actors. This is where chapters 5 to 8 now focus. At the heart of each of these chapters is the concept of ‘constrained autonomy’, depicting a predicament whereby actors, in different ways, have a degree of autonomy to impact on issues of capacity, but at the same time, are also inherently constrained by their position in the system. These chapters draw heavily on the qualitative evidence compiled through the extensive interviewing and other qualitative research. Chapters 5, 6, and 7 each look at the issue of constrained autonomy and CCS from the three different perspectives, senior ministers (Chapter 5), senior executive officials in the prison system (Chapter 6), and finally prison governors and staff (Chapter 7). Each chapter shows how these actors adapt to the pressures on them in their position in the system, and find ways to manage their own equilibrium in this context.

Chapter 8 turns the attention to the growth of private sector prison markets since the early 1990s, and examines the concept of constrained autonomy from the perspective of private sector prison officials. By the end of 2009, private sector prisons accounted for about 11 per cent of the total prison capacity, and as part of the national prison system, they are subject to many of the same systemic constraints which the public sector must face. In principle, the commercial contract provides privately-run prisons with considerable scope to protect their regimes from capacity ‘stretching’. Nevertheless, the reality of the commercial and political situation means that the private sector encounters many of the same pressures of CCS as public sector prisons. Despite this, however, privately-run prisons have much greater autonomy to do things to mitigate the effects of crowding, and to get more out of latent capacity, particularly in the way in which they deploy staff, use facilities, and encourage more ‘normal’ working cultures.

To view the problem of prison crowding as either a demand-side problem or a supply-side problem overlooks the fact that the problem itself is a function of the equilibrium between the two. We see how prison crowding is itself a function of the governance equilibrium sustained in the system. At each level, constrained autonomy of actors has fed into the four key themes of the *problematique* as follows:

- i. Systemic ambivalence towards rehabilitative goals of prison, further aggravated by perceptions that the prison population is ever too high for this situation to be reversed;

- ii. A coping culture allows the prison system to function in response to ever higher prison population, yet in a way which feeds back into perceptions of inherently failing;
- iii. Benign resistance in response to political and policy interventions imposed on the system in response to perceptions of failure; *and*
- iv. Sustained obsolescence and redundancy in the system aggravated by resistance and coping cultures, which feeds back into perceptions of failure.

There are important implications of the *problematique* and constrained autonomy of individual actors. First, we must conclude that CCS is a complex condition, which is beyond the gift of any one actor in the system to resolve. Although it may be tempting to blame politicians, even senior politicians are constrained in their ability to reform this large and complex system. Second, we must conclude that existing theoretical explanations for CCS have had to be widened to encompass an analytical and systemic approach to the problem. In doing this, we inevitably compromise parsimony of explanation and must be content with a fuller analytical understanding of CCS, even if we do not have a theory of it as such. We do however shed light upon some questions for theoretical consideration. Most importantly, the *problematique* has shown how a large and complex public policy system can incorporate countervailing and qualitatively distinct characteristics of under-supply and over-supply. By this we mean that the system has been asked to work at continually close-to-tolerance levels, yet at the same time, it is able to do so while incorporating considerable obsolescence, redundancy, and inefficiency. It does not seem possible however to locate these characteristics on a linear continuum from one to the other. They are qualitatively different characteristics, which incorporate strategic actor and cultural theoretical dynamics, and they exist as part of aggravating and compensating dynamics in a governance equilibrium.

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<sup>1</sup> Former Conservative Home Secretary <sup>[#1]</sup>

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## *Chapter 1*

### **The limits of theory in explaining chronic capacity stress**

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*No one way of conceptualizing any major area of human behaviour will do full justice to all its variety and complexity. Each type of theoretical orientation brings to the surface a different set of problems, provides unique insights and emphases, and thereby makes it possible for alternative and even competing theories to be equally and simultaneously useful, although often for quite different purposes.<sup>2</sup>*

Take a snapshot of any public policy system at a particular moment in time, and you will see a picture of manageable equilibrium between the demands made upon that system by society, and all the things that the system does (and does not do) in response to those demands. Continually evolving values and expectations and demands are balanced against resources and capabilities and efforts of actors involved, all of which sustains equilibrium which allows the system, in one way or another, to fulfil its purpose, do its job, or add value to society. Equilibrium, however, does not mean that the system is in stasis or inertia. The actors that constitute the system are continually in motion, and through their worldviews, cultures, relationships, choices, and actions, they determine the dynamics of equilibria through time. Characteristics of public policy systems, therefore, can be seen as outcomes of all this, properties of these equilibria and the dynamics which are contained within.

For many core state services, the systems which provide them may be seen as too important to be allowed to fail. Whereas failure in the private sector often, although by no means always, can lead to firms going out of business, organizations in core public sector systems can often seem ‘immortal’ (Kaufman, 1976). It is inconceivable that a prison system, for example, would be allowed to fold or go bust (though abolitionists may be in favour)! A consequence is that these systems tend to incorporate any imbalance between demand and supply into their equilibria. If demands or expectations

are too high, then actors find ways of doing the best they can to cope, *i.e.* make the system work. If resources or capabilities are too low, then actors can find ways of recalibrating demands or expectations accordingly or scaling down their own efforts accordingly. In this way it is possible for equilibria to be sustained, and for the system to continue to function, in a state in which systems neither completely excel nor completely fail. They continue to function despite themselves.

In many cases, public policy systems sustain imbalance chronically. As Hogwood and Peters (1985) explain, chronic conditions are the kind which tend to ‘go on and on, and never appear to be cured’ (p10), and after long enough ‘become a fact of life rather than a problem’ (p11). Indeed, chronic conditions tend to get coped with, absorbed, and normalized. They tend to behave in complex ways as both cause and symptom of dysfunction. They can seldom be reduced to simple causal factors, and tend to be the outcome of aggravating and compensating dynamics inherent in equilibria. They may also get reified and given life of their own, and used to justify why characteristics of systems are as they are. Indeed, chronic conditions may live inside systems for long periods of time. Systems can sustain them because they are sustainable. And systems can live with them and even improve. But because they are chronic, they become functions of the system equilibria. And in order to understand the nature of chronicness therefore, it is necessary to understand the nature of the system itself.

How then does public policy and political science theory help us to understand the dynamics of crowding and chronic capacity stress (CCS) in prisons? How do existing theories help us to shed light on why a large public policy system may be able to sustain a situation of capacity stress over the long term? And how do existing theories help to capture the complexities and the multi-dimensionality of this as a chronic condition? In this opening chapter, I turn to three well-established groups of theoretical approaches for insights – rational choice, cultural theory, and governance and New Public Management (NPM). Each in their own way offer insights into the dynamics of the problem. For rational choice explanations, CCS is the outcome of strategic actors behaving ‘rationally’ in response to particular structured incentives and the misalignments inherent in them. For cultural theorists, CCS is a function of different cultural worldviews inherent in a public policy system and contestation between them. Culture plays an instrumental role in conditioning the way in which individuals assess their

options and act on them. Finally, governance explanations set the lens more expansively to look at the overall institutional architecture of the system, and the ability of political actors to steer the system towards desired social outcomes. As a particular variant of governance, NPM has been the dominant public management paradigm during the last thirty years, and has formed the basis for the development of the public policy systems in the UK. NPM contains particular pathologies which have also fed into the concept of the CCS.

As this opening chapter will show, each of these explanations has much to offer in terms of understanding the dynamics of CCS. But as the quotation at the start of this chapter suggests, independently they are not sufficient to capture the entirety of the chronic condition. As the empirical evidence in the research will show, these three approaches must not therefore be seen as potential competing theories vying to be the best and only explanation of CCS. Rather they must be seen as potentially complementary approaches, inter-related and dynamic. By the end of the chapter, I establish that we cannot and should not reject them, but merely accept that, in order that we are able to see CCS in its entirety, they must be broken down and redeployed in a more integrative and holistic context.

## **1.1 Strategic actors, rational choices, and alignment problems**

As good a place as any to start in understanding why public policy systems are as they are is with the individual actors who constitute those systems.<sup>3</sup> By looking at actors in the generic sense as motivated by their own interests, and by looking at the way in which they behave and interact strategically, we can build up a dynamic picture of the system and the way it works. From this methodological individualist perspective, CCS can be seen as the outcome of these dynamics, the outcome of the decisions and interactions between rational and self-interested actors.<sup>4</sup> Ideally, equilibrium between demand and supply would find some kind of optimal point at which public interest was best served. But this assumes that individuals are driven by the same universal concept of public interest and not by their own self-interest. As Shepsle and Bonchek (1997) point out, ‘their incentives dispose them to move away from what would be optimal if only the most effective production of public goods were motivating them’ (p274). CCS can

therefore be seen as a by-product of self-interest rather than as a failure of public interest *per se*.

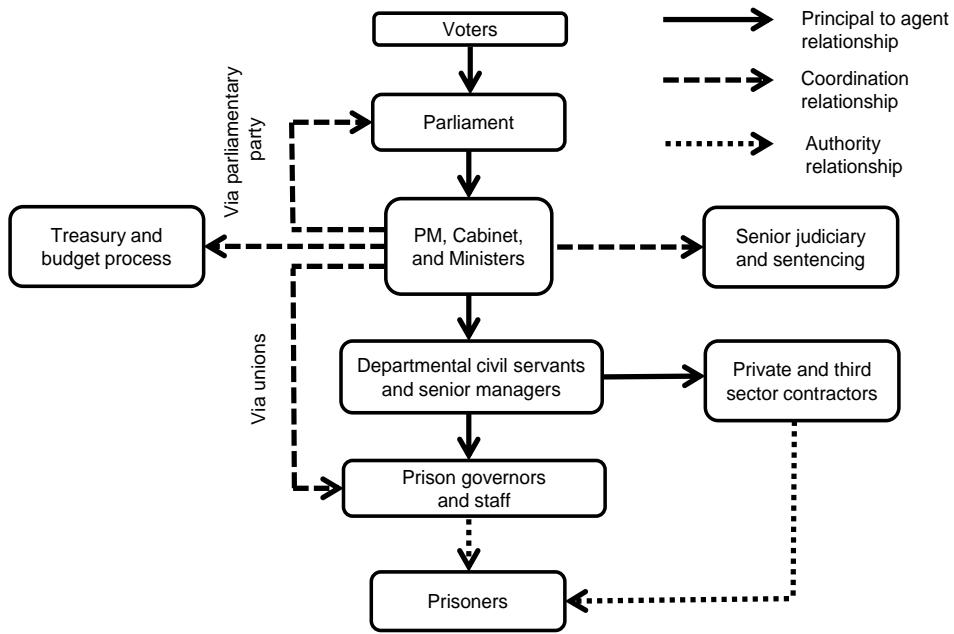
A second point is that rationality, in the sense of ‘rational choice’, has no intrinsic content, but is rather something that is contingent upon the context of the decision and the presumed pay-offs involved. Critics emphasize the importance of institutional constraints on self-interest (Scharpf, 1997; Besley, 2006)<sup>5</sup>, and from this we can understand the concept of ‘rational’ in rational choice as contingent upon structured incentives which actors face. If CCS is the outcome of rational choices by self-interested actors, then there must be something about the structure of incentives which collectively leads rational actors to produce such an outcome.

Thirdly, and by implication, rational choice approaches imply that public policy problems can be ‘solved’ when incentive structures are aligned for all actors involved, and all the key parts of the system are working optimally towards desired outcomes (Shepsle and Bonchek, 1997, p30). This holds theoretically even if in reality optimality is difficult, if not impossible, to attain. Rationality is therefore not only contingent but also ‘maximizing’, and failure in public policy systems is explained by ongoing failure to maximize. CCS appears therefore as the product or symptom of inherent misalignment leading to sub-optimal outcomes. The implication is as well that as long as incentive structures are aligned, then the rest can be left to ‘rational’ inclinations of actors to recognize and choose maximizing outcomes.

Principal-agent theory provides a basis for thinking about how systems sustain CCS. Let us conceptualize the prison system as a chain of relationships of delegated authority from ‘principals’, who delegate authority to ‘agents’ who fulfil those responsibilities on principals’ behalf (see **Figure 1.1**). In doing so, we can explain CCS as a cumulative outcome of misalignments between principals and agents, which, in a variety of ways, cause capacity to leak out of the system. Rent-seeking theory explains capacity stress as the product of actors as agents being able to mislead their principals on the actual cost to them of fulfilling their responsibilities. Hence, they are able to agree and receive budgets from their principals which are surplus to what it actually costs them to fulfil these responsibilities. In short, it is the equivalent of agents ‘taking a cut’ from budget or ‘creaming off’ benefits for themselves, unbeknown to the principal. As self-interested agents, they can extract surplus capacity from the system and use it for their

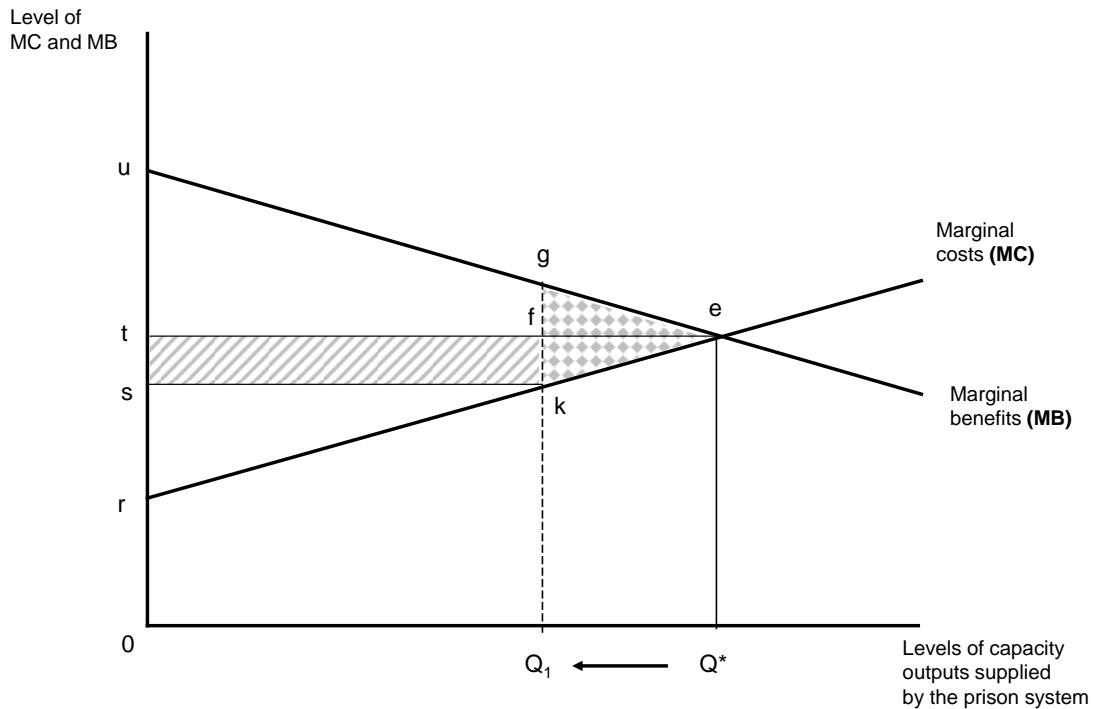
own benefit. In bureaucracies that incorporate strong professions or unions, rent-seeking strategies may explain inefficient use of capacity.

**Figure 1.1 Key relationships between actors in the prison system**



Bureau-shaping (Dunleavy 1991 and 2012; James, 2003) provides a more nuanced principal-agent explanation for CCS. It recognizes that actors in modern public policy systems are heavily constrained in their ability to successfully misreport costs to their principals. Indeed, the risks of doing so are too high. Bureau-shaping therefore predicts that actors will, by and large, report accurately the actual costs of their outputs to their principals, but in doing so, they will seek to shape their budget and work profile in such a way as to bring selective benefits to their own level, and furthermore, displace the costs of doing so downwards to actors below them in the chain. In theory, any of the principals outlined in Figure 1.1 who are involved in the budget process can engage in shaping activity, and in displacing the costs of this downwards to agents below. **Figure 1.2** provides a graphical illustration of this.

**Figure 1.2. How shaping behaviour leads to under-supply of capacity**



The system is in equilibrium at (e) when outputs are supplied at  $Q^*$ . At this point, it is providing maximum possible social welfare to society. Each of the following is shown by the area contained inside the labeled points.

Total benefits of the system to society	$= 0ueQ^*$
Total costs of the system to society	$= 0reQ^*$
Total benefits flowing to the principal/consumer	$= tue$
Total benefits flowing to the agent/ producer	$= rte$

The principal engages in shaping activity in order to maximize their own benefits while attempting to maximize social welfare. This results in under-supply of outputs and a transition from  $Q^*$  to  $Q_1$ . This signifies capacity leaking out of the system.

The actor who is doing the shaping reports accurately the actual costs of their outputs to their own principals above. But the costs of shaping (i.e. the costs of under-supply) are displaced down to agents below them in the system.

As a result, the net loss of benefits to society	$= kge$
Total benefits of the system to society	$= 0ugQ_1$
Total costs of the system to society	$= 0rkQ_1$
Total benefits flowing to the principal/consumer	$= sugk$
Total benefits flowing to the agent/ producer	$= rsk$

Source: Based on Dunleavy (2012)

Applied to prisons, there may be any number of ways in which shaping behaviour can aggravate CCS. Governments or senior ministers, for example, may espouse tough stances on crime and punishment, and ‘talk up’ the deterrent and punishment effects of prison. If this behaviour feeds through into an increase in the prison population, then the budget of the prison system should in theory adapt to reflect this increase. However, the political costs of securing or reallocating money to expand prison capacity are likely to be high, and hence governments or ministers may opt for a strategy of absorbing increased population by seeing how far they can stretch or squeeze the system with crowding and other cutbacks in service provision. Costs of shaping activity are therefore passed downwards to senior officials who are expected to make the system work at incrementally higher levels of capacity stress. Similar types of shaping activity may take place at all levels of the system, thus pushing costs of shaping downwards into the system, with the consequence that prisoners have to absorb the impacts of this stress (with the risk that society and voters absorb the costs of a continually stressed prison system).

At all levels in the system, actors must also manage transaction costs of finding a balance between decentralization and centralization. Horn (1995) argues that principals face dilemmas in deciding to what extent to intervene in the activities of bureaucratic administrators. He sees this dilemma as an inherent trade-off between costs and risks of doing too much or doing too little.<sup>6</sup> Principals can centralize, and do more to prescribe, direct, and monitor the activities of their bureaucrats. In doing so, they incur costs of doing more and the risk that if things fail, they will be implicated and held accountable. Or they can decentralize, and do much less to prescribe and monitor. In this case, they incur benefits of doing less, but the risk that they are less in control and may incur costs of rent-seeking, or acute and unexpected failure. CCS is likely therefore to be aggravated by imbalance in centralizing and decentralizing tendencies. For example, slow accretion of authority at the centre may occur as politicians perceive greater complexity in society and need for tighter control. Stress may therefore be seen as a cumulative effect of excessive command-and-control or over-centralizing dynamics.

A strong theme of Horn’s approach, and others such as Moe (1995), is the tendency for political actors to engineer their institutional environment in such a way that it brings selective benefits to their own group (and costs to others). Horn argues that

legislators seek to maximize long term commitment to their own goals by passing legislative and institutional reforms which are difficult for their opponents to reverse in the future. In a similar way, Moe points out that public bureaucratic systems are unavoidably about politics and political organization (p122), and that the ‘fundamental task for political actors is to find and institute a governance structure that can protect their public organizations from control by opponents’ (p125). This, says Moe, tends to produce incoherent and ineffectual public policy systems. As he puts it, ‘winning groups, losing groups, legislators and presidents combine to produce bureaucratic arrangements that, by economic standards, appear to make no sense at all’ (p149). CCS may therefore be aggravated by ineffectual and incoherent institutional design, caused by the effects of this kind of structural choice and conflict.

This leads into another important potential explanation for CCS – the inability of the system to solve collective action problems (Olson, 1965; Ostrom, 1998). Even if a senior minister is inclined to take on the role of ‘policy entrepreneur’ and attempt to tackle CCS, incentives must be continuously renewed for key actors to remain supportive and engaged. As Miller (1992) points out, collective action problems inherent in the prisoner’s dilemmas can be dissolved by ‘repeated games’ between key actors which build up trust and incentive that further cooperation is the best possible option. ‘Cooperation’, Miller argues, ‘is only rational when each player has a great deal of confidence that others are cooperating’ (p186). Ensuring institutional and interpersonal opportunities for successful repeated interactions between key actors is not easy however. Even with the best intentions, ministers and top officials may be inclined to make promises which cannot be kept for reasons entirely beyond their control. As Riker and others illustrate, political manipulation towards desired reform may be possible for highly skilled politicians; but it is not straightforward, and rates of failures can be high (Riker, 1986; McLean, 2001 and 2002). CCS may therefore be the result of continual failure to solve coordination problems, and manipulate and sustain reform.

Collective action problems at ‘high’ political level may result in build-up of pressure or stress being tolerated or even overlooked, until that is, crisis occurs. Critics have shown this to be the case in many areas of public policy, particularly in cycles of *ex-ante* under-investment and *ex-post* over-investment in response to major crises.<sup>7</sup> Game-theoretical scenarios of ‘poker’ or ‘chicken’ are relevant here for thinking about

how governments handle build-up of capacity stress (Scharpf, 1997). In prisons, ministers face inherent uncertainty about fluctuations in demand for prison during their terms in office, and in this sense, they play poker with ‘nature’ in making decisions about how to prepare the system for potential fluctuations. Ministers may be lucky in that prisons remains relatively quiet and free of crisis. Others may be less lucky, and have to contend with major disturbances or extreme population pressure which has been allowed to build up incrementally (often before their term in office has even started). In this sense, ministers must play the hand they are dealt. They must make a whole series of imperfect calculations about sufficiency of latent capacity in the system, probability of severe failure, and the likelihood that they will be in office and have to suffer its political consequences.

Lacey (2008) employs the prisoner’s dilemma as a game-theoretical analogy to argue that the political economic structure of liberal market economies, particularly the US and the UK, creates specific incentives for politicians to allow prison populations to increase, while at the same time, deprioritizing rehabilitative goals of prison, and under-investing in non-custodial alternatives to prison.<sup>8</sup> In this sense, governments and ministers may be inclined to follow strategies which correspond to the political economic structure of system and, in doing so, perpetuate the wider problem. For new governments or ministers arriving in office, the problems of prison crowding and capacity stress may be seen as both a problem too difficult to solve, and one also that is not likely to bring major political rewards even if it could be solved. There may consequently be little incentive for governments and ministers to buck the prevailing system in search of expansive reform.

Finally, actors may actually see benefits in supporting a strategy of maintaining a manageable degree of capacity stress in the system. Running prisons at high levels of stress may be associated with political toughness, hardship, punishment, and deterrence. Actors at all levels may also feel that there is latent capacity already in the system, and that some degree of stress is a constructive way of ‘keeping its feet to the fire’, *i.e.* extracting more value from it. In both senses, stress may be engineered by design, either unspoken or formalized through government policy. The dynamics of instrumental rationality here may be subtle and nuanced. Indeed, senior ministers and officials may have much to gain from maintaining a state of constructive under-supply in the system,

both to elicit greater value, but also to orchestrate some kind of supply-side pressure on the judiciary to keep rates of custodial sentencing under control. Constructive undersupply of prison capacity may also bring political advantages to actors at all levels by sustaining a widespread impression of a system constantly over-stretched and under-resourced.

## **1.2 Adding in culture, beliefs, and values**

Social scientists often talk about an axiomatic distinction between ‘strategic actor’ and ‘cultural’ explanations for social or organizational phenomena (Douglas, 1986; Barnett and Finnemore, 1999; Christensen and Laegrid, 2002). Whereas economicistic explanations conceptualize CCS as a condition of misalignment of structured incentives between individual actors, cultural theory explanations suggest that the problem is a function of shared values and beliefs amongst groups of individuals in institutional settings, and contestation between them (Thompson et al., 1999, p1). In saying that CCS is cultural, we are saying that there is something about the mix of shared values and beliefs which causes individuals in their institutional settings to think and behave in ways which sustain the basic condition. We are saying that CCS is part of the culture of the system, and in this sense, there is something much bigger than individual actors which determines the way in which these actors think and behave.

For Douglas (1986), it is individuals’ ‘demand for order and coherence and control of uncertainty’ (p18) which explains how they shape their institutional setting. It is the institutional setting which provides them with a ‘set of analogies’ with which to ‘justify the naturalness and reasonableness of the instituted rules’ (p112). Inherent in such analogies is a prevailing outlook on how the world is and an associated set of prescriptions about what must be done to maintain its order and coherence. Inherent in cultural theory therefore is a functionalist logic which explains phenomena in terms of the function they serve in a system. This implies self-perpetuation as actors behave in ways which necessarily perpetuate their institutional setting. ‘Institutions’, Douglas points out, ‘have the pathetic megalomania of the computer whose vision of the world is its own programme’ (1986, p92).

Cultural theory and grid-group analysis help to analyse CCS (Thompson et al., 1990; Dunleavy and Hood, 1994; Hood, 1998). In matrix form, **Table 1.1** identifies four

prevailing ‘myths’ about the nature of the world, and four corresponding prescriptions about the type of cultural solidarity and organization required to counter those myths. The grid dimension (high/low) is determined by the extent to which institutionalized rules and classifications regulate the interactions of individuals. The group dimension (high/low) is determined by the extent to which the individual is absorbed in and sustained by group membership (Thompson et al., 1999, p4). Four cultural archetypes are generated – hierarchical, individualist, egalitarian, and fatalist.<sup>9</sup> For each, I highlight the particular prevailing worldview (‘WORLD’), the prescribed response in terms of how to organize public policy systems (‘RESPONSE’), and the inherent risk of this corresponding strategy (‘RISK’). Each cultural archetype contains the seeds of its own demise, and it is these respective weaknesses which give clues as to how culture may contribute to CCS (Hood, 1998).

**Table 1.1 Four cultural archetypes and how they relate to CCS**

		Importance of GROUP life	
		Low	High
		<i>WORLD is capricious, erratic, and impossible to predict</i>	<i>WORLD is inherently unstable and unforgiving, and crisis is imminent.</i>
Importance of RULES (GRID)	High	<p><i>RESPONSE is FATALIST</i> in that there is little point in trying to control anything, although randomized control techniques can work</p> <p><i>RISK</i> of excessively pessimistic or passive attitudes amongst actors in the system, and normalization of coping as standard</p>	<p><i>RESPONSE is HIERARCHIST</i> consisting of strong social and rule-based control structures.</p> <p><i>RISK</i> of excessive rigidity and inward-focus, perverse effects of ‘bossism’, stifling command-and-control management, and excessive normalization of deviance.</p>
	Low	<p><i>WORLD is inherently stable and forgiving</i></p> <p><i>RESPONSE is INDIVIDUALIST</i> in which boundaries are subject to negotiation, and control is mediated through rule-based competition.</p> <p><i>RISK</i> of excessive opportunism or rent-seeking behaviour</p>	<p><i>WORLD is generally forgiving but can sometimes tip over into instability and crisis</i></p> <p><i>RESPONSE is EGALITARIAN</i> in that the group identity is all-important and provides the main basis for action</p> <p><i>RISK</i> of resistant professional bodies, territorial attitudes amongst different types of actors, power relations between classes, and ‘them and us’ attitudes to punishment and prison</p>

In the mind of the fatalist (top left), the world is capricious, erratic and impossible to predict. Fatalistic actors see their predicament as hopeless, as subject to rules and

regulations which they themselves can do little or nothing to affect. As Barnett and Finnemore (1999) point out, fatalistic cultures in public sector organizations may reflect fatalistic cultures existent in external policy community or society at large. They argue that external policy environments can often be ‘ambiguous about missions and contain varied, often conflicting, functional, normative, and legitimacy objectives’ (p718), and it may be little surprise that organizations absorb and reflect these pathologies in the way they set values and in the way they operate. If a public sector system is perennially cast as ‘failing’ or struggling (even regardless of its actual level of success), it may not be surprising if fatalistic cultures prevail amongst those working in the system.

Chronic fatalism is conveyed in concepts such as Meyer and Zucker’s (1989) ‘permanently failing organizations’ or Hargrove and Glidewell’s (1990) ‘impossible jobs’. Meyer and Zucker argue that the reason why many private firms appear to survive in a state of permanent failure is that groups dependent on their survival (*e.g.* workers, unions, suppliers) exert pressure enough to maintain status-quo practices despite continual sub-optimal performance. The larger firms become, the more entrenched and powerful these dependent groups. Resistant behaviour may seek to maintain inefficient status-quo positions, or increase inefficient practices to the detriment of the overall performance and outputs of the system. This brand of fatalism has direct relevance for large public sector systems with strong unions or professional bodies. Critics have often looked to policy areas such as prisons and social welfare for examples of organizations existing in a state of permanent crisis (Bottoms, 1980; Tropman, 1981; Tournier, 1994).

Fatalism is also a strong theme running through the concept of ‘impossible jobs’ (Hargrove and Glidewell, 1990; Dilulio, 1990; Barrios, 2002). Hargrove and Glidewell (1990) identify four dimensions which combine to create the concept:

- low legitimacy of the agency’s clientele;
- high intensity of conflict among the agency’s constituencies;
- low public confidence in the authority of the agency’s profession; and a
- persistently weak agency myth (p5).

It is interesting here that, in cultural theory terms, the general concept of ‘impossible jobs’ is strongly fatalistic, yet these four component aspects combine other cultural archetypes which are constituent in the dominant culture. Low legitimacy of the agency’s clientele and low public confidence, for example, both imply strong egalitarian

strands of ‘us and them’. And high intensity of conflict implies strong individualistic strands. The point here is that cultural archetypes are not straightforward, and indeed, imply contestation and inherent equilibrium within the grid. Again, the authors identify particular policy areas, which can be classically associated with ‘impossible jobs’ and dominant fatalistic cultures, particularly running welfare services and the job of running correctional institutions.

‘Impossible jobs’ are often associated with ideas of continually working against the tide. As Hargrove and Glidewell point out, ‘organizational coping’ becomes an important mode of response for these organizations, and becomes deeply incorporated into the cultural fabric of the organization (p45). They suggest that elected officials have very little incentive to grapple with ‘no-win dilemmas’ experienced by public managers, because most of the time ‘the political benefit is too uncertain and contentious’ (p32). Professional-political entrepreneurship becomes the most significant mode of coping, and ‘unless the danger is seen as real and pressing’ enacting any change usually requires more than scarce resources will allow and more staff commitment than the fading danger will support. Hargrove and Glidewell say that ‘although embarrassing, some low-frequency, high-cost, high-visibility, but inevitable tragic events may provide opportunities for resource mobilisation for reform’ (p35).

In the mind of the hierachalist, the world is inherently unstable and unforgiving, and hence strong social and rule-based control structures are prescribed. This is particularly apposite for prisons which by nature tend to rely on discipline through formal rules, command-and-control and authority-based chains of accountability.<sup>10</sup> As critics point out, there may be numerous reasons why excessive hierachalism may lead to CCS. The potential for rule-making can to lead to rigidity and lack of ability in the system to respond to changes in the external environment. Crozier (1964) outlines an inherently chronic cycle at work here. He argues that the establishment of rules and structures in public bureaucracies reduce the capacity for responsiveness to environmental change. As a result, crisis is seen as a ‘distinctive and necessary element of a bureaucratic system’, enabling it to ‘develop, and indirectly [...] to grow’ (p196). Without crisis, bureaucratic systems may be ‘too rigid to adjust to the transformations that the accelerated evolution of industrial society makes more and more imperative’ (p198). The response to crisis is that ‘new pressure is generated for impersonality and

centralization' (p194) leading once again to more rigidly defined tasks. The tendency here is for the public bureaucracy to move between situations of coping and crisis.

In a similar vein, Wildavsky (1988) argues that in seeking to design public policy systems in such a way as to eliminate all but infinitesimal sources of risk, policy makers actually increase risks of major failure or crisis. He advocates building 'resilience' into organizations to be able to cope more effectively with uncertainty, rather than over-designing rules, regulations, planning and other systems in the misplaced hope that risk can be nullified. Wildavsky views this process of 'anticipation over resilience' as part of the culture of modern bureaucracies, and part of the reason for increased standardization and centralized conformity (p12). Other critics have argued along similar lines, particularly in relation to 'high-reliability' public policy systems (Landau, 1969; Landau and Chisholm, 1995; Frederickson and LaPorte, 2002). As Landau explains, the push for economic efficiency over the years has the effect of tightening the system, thus reducing levels of redundancy which are often vital in ensuring reliability and adaptiveness to sudden environmental change (1969, p356).

Another risk of excessive hierachalism may be characterized as perverse effects of 'bossism' (Dunleavy and Hood, 1994; Hood, 1998). Bossism may be viewed as strong orientation in public policy systems towards the importance of top officials, almost a 'fetishization' which dictates that as long as you have the right officials in charge, everything else will look after itself. In command-and-control cultures, such as prisons or the armed forces, emphasis on the importance of top officials tends to be supported by strong hierarchical disciplines throughout the ranks. Indeed, command-and-control hierarchy is likely in itself to sustain CCS if the order coming down from on high is to find ways of coping and making things work (and not questioning it).

Excessive hierachalism may also encourage what Hogwood and Peters (1985) refer to as 'iatrogenic' control problems, whereby attempts from the top to impose greater control simply have counteractive effects and produce less control (p42). These ideas form a strong part of the literature on the 'crisis of managerialism' (see, for example, Parker, 2002; Boyne, 2007).

A third general risk of excessive hierachalism is that it offers scope for 'normalizing deviance' in high-risk public policy systems (Vaughan, 1996 and 2005). As long as bureaucratic procedural targets are being met, potentially serious build-up of

stress can be normalized and subsumed within the bureaucratic culture of the system. In large and complex systems, the actual process of normalization takes place at the margins and is barely visible. It is the cumulative effect of lots of small incremental decisions to find ways round problems or to push the capacity of the system slightly further in order to absorb increments of pressure. Barnett and Finnemore (1999) characterize this as ‘bureaucrats making small, calculated deviations from established rules because of new environmental or institutional developments, explicitly calculating that bending the rules in this instance does not create excessive risk of policy failure’ (p271). In a political or high-pressure commercial setting, small increments can easily be rationalized. Systems can therefore continue to absorb pressure invisibly and chronically, until at some point, acute crisis is triggered.

The maintenance of strong egalitarian cultures in and around a public policy system can have important implications for CCS. In the egalitarian worldview, it is the social group which is the all-important reference point for prescriptive action. Again, staff unions or professional bodies may have strong group influence on the deployment of capacity in a public policy system, both in terms of resistance to, and facilitation of change. In ‘total institutions’ (Goffman, 1961),<sup>11</sup> of which prisons are one strong archetype, group identities define the community inside the walls (*i.e.* staff and inmates) in opposition to those outside. Inside the walls, Goffman distinguishes between ‘primary’ and ‘secondary adjustments’ of inmates (and, we assume, staff too). Primary adjustment denotes all cooperative and programmed behaviour, which is aligned with the objectives and ‘spirit’ of the institution. Secondary adjustment encompasses what he refers to as the ‘under-life’ of the institution, the ‘unauthorised’ means or ends employed, and the ways of getting round the organization’s assumptions and expectations (p172). Total institutional characteristics have important implications for CCS. On the one hand, actors may be able to hide rent-seeking activities more easily in these closed environments, while those on the outside may be disinclined to worry too much about a world out-of-sight and out-of-mind.<sup>12</sup> On the other hand, the scope for flexibility between primary and secondary adjustments, to use Goffman’s terminology, may be an important factor in allowing the institution to cope with and sustain CCS.

Egalitarian emphasis is also prominent in Foucault’s (1991) argument that ‘carceral’ state institutions, particularly prisons, reflect latent class divisions and power

relations in society. For Foucault, the mechanisms and the dynamics are deeply structural and embedded in operation of state institutions, yet they perpetuate ‘two distinct classes of men, one of which always meets on the seats of accusers and judges, the other on the benches of the accused’ (p276). In this way, he argues, ‘law and justice do not hesitate to proclaim their class dissymmetry’ (p276). Indeed, the institutions of state demarcate and reproduce a ‘delinquent’ class, which itself functions as a ‘political observatory’ for the judging and monitoring classes (p281). For Foucault, ‘so successful has the prison been that after a century and a half of failures, then prison still exists, producing the same results, and there is the greatest reluctance to dispense with it’ (p277). CCS may be interpreted as reflecting deeply-entrenched power relations in society, as an artefact of one class’ ability to engineer institutions of dominance over another class by means of, what Foucault calls, a ‘political and economic less dangerous illegality’ (p277).

The fourth cultural theory archetype is individualist, one which is based on perceptions of an inherently stable and forgiving world, and one which prescribes free negotiation and competition as the most effective form of social organization. Excessive individualism, however, can lead to pathologies of collective action problems and rent-seeking behaviour, as much of the discussion in the previous section has highlighted. I have covered these arguments in the previous section and so do not reiterate them here.

### **1.3 Seeing the whole - governance, architecture, and steering**

The concept of ‘governance’ has been a rather enigmatic feature of UK political science and public administration literatures since at least the late 1970s.<sup>13</sup> So much so, that some have questioned whether the concept can actually be termed a ‘theory’ or ‘paradigm’, rather than just a catch-all concept with multiple meanings and applications (Rhodes, 1996). They have also questioned whether there is anything qualitatively specific enough to distinguish it from the basic concept of ‘government’ (Goetz, 2008). Interesting though these discussions are, governance seems specific enough for us to define some broad characteristics, which are generally relevant to the theme of CCS

- overall architecture;
- new mechanisms and actors; and
- the concept of steering.

For a start, governance entails a picture of the whole, the design and operation of large-scale public policy systems, their overall architecture, and the way in which their constituent parts fit and operate dynamically to achieve desired outcomes. Gamble and Thomas (2010) imply three dimensions of governance which I have summarized in **Table 1.2**.

**Table 1.2 Three dimensions of governance**

	<b>Set of ordering principles</b>	<b>Set of levels</b>	<b>Set of techniques</b>
<b>Focuses on...</b>	Overall boundaries of public and private, and the limits and instruments of state power.	Allocation of policy and implementation tasks across different tiers of government.	Means by which power, interests, rights, and obligations are mediated between actors
<b>Incorporating...</b>	Laws, rules, standards and principles which shape and animate the state.	International and EU, national government, regional and local tiers, and individual co-production.	<i>De jure</i> and <i>de facto</i> obligation, moral and ethical imperatives, cooperation, or incentivization.

**Source:** My summary of discussion in Gamble and Thomas (2010, p4).

It implies a ‘set of ordering principles’ such as laws, rules, standards, which ‘determine the locus of decision making, the limits within which power is exercised, and the boundary between the public and the private’ (p4). Governance also implies a ‘set of levels’ at which tasks are carried out. Thirdly, governance implies a ‘set of techniques’ which determine how the state does what it does, in terms of ‘how power is exercised, how rights are defined and protected, and how interests are represented’(p4). Second, governance implies challenges which emerge from the introduction of new mechanisms and actors in public policy systems. Inherent in governance literatures over the decades has been a sense that public policy environments and the institutions which give them shape have become more complex and variegated, and in need of more sophisticated conceptual toolkits to describe and prescribe change. For Rhodes (1996), governance embodies fundamental changes towards more ‘self-organizing, inter-organizational networks’ incorporating public, private, and third sector actors (p658). Part of this newness over the last three decades has been the integration of market-based principles

into the public sector (Aucoin, 1990), and a reconceptualization of the operation of government from a command-and-control structure of 'ordering and doing' to one based much more on self-sustaining principles of markets in which economic actors respond to structured incentives which are themselves inherent in the norms of market operation (Walsh, 1995). The challenge of government under such principles, in theory at least, becomes one of designing incentive structures to keep this self-sustaining logic of operation working towards desired outcomes.

Thirdly, and consequently, governance implies finding ways to steer the operations of these new systems towards desired policy outcomes. One of the much-used metaphors associated with governance is a shift from government as 'rowing' to government as 'steering' (Dunsire, 1990; Peter and Savoie, 2000; Pierre and Peters, 2005). This view that public policy systems have become more complex in their structural and functional configurations, and the inherent move towards more market-based principles of self-sustaining incentives and alignments, comes with the view that political actors must find ways of steering the collective outputs of these configurations. Although some explanations of governance deprioritize the role of central political actors in favour of more networked approaches (Rhodes, 1996; Kooiman, 2003), critics generally acknowledge an important instrumental role for central political actors.<sup>14</sup> As Peters and Savoie (2000) point out:

Governance implies 'steering' or employing some mechanism of providing coherent direction to society. This conception of governance assumes that there is a need for at least some central direction if a society is to be successful in coping with all the challenges that face it. (p32)

Bovens (1990) suggests that as public policy systems grow in scale and complexity, the difficulties and the limits of steering grow too. He cites Downs' laws relating to the inherent limitations on governments' ability to steer the work of bureaucracies: namely that the larger and more complex bureaucracies become, the harder steering becomes; and the more that governments try to steer, the more bureaucracies seek to resist (p143). He argues that a 'problem of many hands' means that it becomes almost impossible to attribute instrumental causality across individual actors in the organization (let alone successfully plan steering in advance). Bovens characterizes how causes and attribution of failure can be 'institutionalizable' and hence cleansed of individual accountability.

Something which started as rational and deliberate human conduct can get transformed by the structure of complex organizations into a kind of 'act of god' with its own dynamics, which seem independent of any specific individual activity. The attribution of responsibility, secondly goes hand in hand with prevention. The fact that no-one can meaningfully be held accountable *ex post* for organizational misbehaviour, implies that no one needs to behave responsibly *ex ante* (1990, p115).

Exactly this kind of logic can be applied to a problem such as CCS. Many actors in the system may be able to recognize and criticize the problem, yet at the same time, may also argue that the 'problem of many hands' makes it impossible for them to do much about. The ability to sustain CCS in a system can therefore be seen as both something inherent, as a failure of political actors to steer the system effectively, and at the same time, an illustration of how these very same actors in the system are able to present the problem as one which is heavily institutionalized and beyond the capacity of them or any other individual actor to change.

At the heart of the governance concept, there is an important axiom which distinguishes between efficiency and effectiveness, and values of accountability, transparency, legitimacy and democracy (Aucoin, 1990; Pierre and Peters, 2005; Peters, 2010). Critics have argued that sustainable governance must find ways of balancing these potentially contradictory objectives. As Pierre and Peters (2005) put it,

For political scientists, values such as efficiency and effectiveness must be weighed against values like legitimacy and democracy. Efficient governance arrangements that do not allow for some degree of democratic transparency and control can never be sustainable in the longer term (p133)

Deficit or frailty in any of these concepts may help to explain why public sector systems sustain capacity stress. If systems have weak legitimacy, in other words, if political elites or society do not 'believe' in them or are not committed to them, it is likely that they may endorse strategies to run the system at consistently 'close to tolerance' levels, and will have scope to do so, largely because there is insufficient 'voice' or resistance in society to force increased financial or intellectual investment. Prisons may be one good example of an institution in which low levels of legitimacy can be tolerated by society and politicians. Furthermore, they are an institution in which one group of 'consumers' of the service, namely prisoners, who are restricted from exercising 'exit' or 'voice'.

Laws, rules, and regulations offer varying degrees of protection for prisoners from excessive under-resourcing of the system or general system neglect. Yet if as *a priori* protective mechanisms, they are not strong enough, or if elites can find ways of manoeuvring around them, redefining, or stretching them, legitimacy is likely to weaken. If every time a public policy system is put under stress, laws, rules, or standards, are modified to legitimate increments in stress, the long term effect may be to store up risks and sustainability problems for the future. Similarly, if accountability structures are weak, it may be that policy makers or society would not be in a position one way or the other to judge how the system is performing or whether it is excessively overloaded. In both cases, CCS may sustain for long periods of time with relatively manageable political consequences.

At this point, there is an important link to be made between the generic concept of governance, and the more specific paradigm of ‘managerialism’ or New Public Management (NPM), which has been at the heart of public policy change in the UK during the last thirty years. The relationship between the two is difficult to pin down. In some respects, NPM can be seen as a specific paradigm of governance. Critics have characterized NPM as having specific properties which give it an essential identity. It is often defined, for example, around ideas of disaggregation, incentivization, and competition (Hood, 1991; Dunleavy and Hood, 1994). These same authors however also acknowledge that although general properties can be distinguished, NPM comes in many variations which combine its different aspects in a whole variety of ways (Hood, 1995; Dunleavy et al., 2006).

**Table 1.3 Key features of New Public Management (NPM)**

<b>Three dimensions of governance of public policy systems</b>			
	<b>Set of ordering principles</b>	<b>Set of levels</b>	<b>Set of techniques</b>
<b>General governance dimension</b>	Overall boundaries of public and private, and the limits and instruments of state power.	Allocation of policy and implementation tasks across different tiers of government.	Means by which power, interests, rights, and obligations are mediated between actors
<b>Particular feature of New Public Management (NPM)</b>	Strong emphasis on efficiency and effectiveness of public management. Integration of private sector markets and competition into public service provision.	Vertical fragmentation of traditional bureaucratic hierarchies into corporate agencies. Principle of separation of policy and implementation tasks.	Disaggregated mechanisms for delivering public services. Use of quasi-contracts, outsourcing, performance management and evaluation of outputs.
<b>How this potentially contributes to capacity stress</b>	Principles of efficiency and effectiveness 'crowd out' principles of legitimacy and accountability. 'Hollowing out' of public sector and squeezing of resources.	Capacity leaks out of the system due to principal-agent and coordination problems. Allocation of functions between levels is subject to political manipulation.	Transaction costs and complexity of public policy systems increase. Emphasis on outputs and subordination of input standards.
<b>Developments associated with late NPM and possible new paradigms</b>	Private sector markets and competition still a major factor in public management. Increased focus on productivity and quality of services based on customer needs.	Reintegration of government structures and systems. Increased devolution of tasks to local and third sector suppliers. Co-production of public value.	Radical disintermediation in delivery chains reduces complexity. Digitization is key in facilitating this. Relational contracting and clearer incentivization.

**Source:** My development of three dimensions taken from Gamble and Thomas (2010, p4) and relevant literature on New Public Management (NPM).

**Table 1.3** links the three governance dimensions to defining features of NPM. In the rest of this section, I discuss key characteristics of NPM, and how these may feed into CCS. From the late 1970s onwards, New Right doctrines began to gain dominance at the heart of the UK state, and underpinned waves of NPM reform throughout the 1980s and 1990s. The ‘set of ordering principles’ underpinning these reforms were based on efficiency and effectiveness of public services (Jenkins, 2008), inculcation of private sector management principles into the public sector, and the integration of private sector markets and competition into traditional monopolistic public sector forms of delivery. Christensen and Lægraud (2002) describe this as ‘one-dimensional economic-normative dominance’ (p301), in which ‘reform ideas are imbued with a common vision of a new orthodoxy with strong market and management orientation’ (p303).

Whereas critics had complained about overload and excessive demand for public outputs during the 1970s and early 1980s,<sup>15</sup> marketization and competition throughout the 1980s took arguments to the other extreme. Critics began to interpret the problem as one of supply-side stress and ‘hollowing out’ of state capacity (Rhodes, 1994 and 1996). Waves of privatization and outsourcing to private sector reduced the size of the public sector, and transferred generic administrative functions into private sector management (Walsh, 1995; Margetts, 1991 and 1999). Renewed emphasis on values of efficiency and effectiveness also encouraged the need to think about maximizing impact from available resources and capacity, and systematic tightening or squeezing of resources over time (Chapman, 1982). Running a form of constructive under-supply of capacity provided a way of ‘sweating’ public assets. In this sense, CCS can be seen as part of the source code for New Right approaches to running large public policy systems.

A second important aspect of NPM change relates to the ‘set of levels’ at which tasks are performed, and from the late 1980s onwards, a process of fragmentation of traditional hierarchical administrative structures, and delegation of responsibility for management and delivery of public services to newly-created executive agencies.<sup>16</sup> Intrinsic in this shift was a putative separation of policy functions from operational and delivery functions (Jenkins, 2008), and parcelling up of operational functions into independent executive agencies run by chief executives with control over their own budgets, and subject to quasi-contractual performance management agreements with respective Whitehall departments.

CCS may be explained by a straightforward inability of policy makers to coordinate the disaggregated parts of the system. As Dunleavy and Hood (1994) have argued, new fragmented arrangements ran the risk of much greater complexity in delivery chains, as well as increased number of principal-agent interfaces at which shaping or rent-seeking behaviour could extract capacity from the system. In his analysis of UK social welfare administration throughout the 1990s, James (2002) shows how two factors, 'organizational separation' and 'performance contracting problems' combine to present significant barriers to more effective, integrated working across different agencies. The costs of coordination failure are likely to be considerable, both in terms of real financial loss of failed projects, and in terms of costs of duplicating efforts or counter-acting effects.

A third main aspect of NPM relates to the 'set of techniques' based around incentivization, quasi-contractual mechanisms, and prioritization of output and outcome-based measures of performance. Implicit in this has been the subordination of inputs to a kind of second-order significance, the implication being that decisions about the appropriateness of the scale of inputs is contingent on a decision about whether outputs and outcomes are considered satisfactory. NPM suggests that the idea of acceptable or minimal standards for inputs into a public service has gradually become subsumed by a dominant discourse of defining, measuring and evaluating performance as outputs. Increased prevalence of these techniques has important implications for capacity stress. First, subordination of input standards and heavy focus on outputs and outcomes create pressures on organizations to set themselves up around delivering against targets while at the same time 'hollowing out' other aspects of capacity which may not be seen as directly contributing to target fulfilment. This may be seen in a positive light as a process of 'streamlining', 'leaning', or 'focusing' of the system. It may however lead to excessively tightly-wound systems, which have little inherent flexibility to respond to fluctuations in scale or nature of demand. Organizations are able to give the appearance of being successful simply by meeting targets, but if they are not the right targets, or if the target regime has 'blind spots', capacity stress can lurk beneath the surface and cause problems down the line.

There is another important dimension to the relationship between governance and NPM. In many ways, the increase in interest in the concept of governance over recent

years can be seen as a response or antidote to pathologies associated with NPM. In particular, the need to look at the overall architecture of a public policy system, and the need to think in terms of steering, are both responses to these problems of excessive fragmentation and disaggregation, which emerged as the NPM era developed. Indeed, critics have identified paradoxical elements in mature NPM which, on the one hand, encourage improvements, yet on the other hand, produce undermining or counter-productive effects (Maor, 1999; Hood, 2000; Hood and Peters, 2004).

Waves of paradigmatic change however are seldom linear and straightforward. A body of literature has developed throughout the 2000s which focuses on a putative post-NPM era, and the constituent shifts in aspects of NPM towards counter-trends and new dynamics (Dunleavy et al., 2006; de Vries, 2009; OECD, 2010). The concept of governance, in this sense, is enigmatic because it implies a way forward, an antidote to NPM pathologies. In response to the effects of fragmentation of structures and disaggregation of delivery chains, public management can be seen to have shifted back towards *reintegration* of systems and structures, and much more ‘holistic’ and ‘needs-based’ approaches to public services. Dunleavy et al.’s concept of ‘digital era governance’ identifies, for example, themes of reintegration, needs-based holism, and digitization as main components of a possible post-NPM paradigm (Dunleavy et al., 2006). Signs of these dynamics have already been visible across the UK public sector throughout the 2000s, and the prison system, as the next chapter discusses, has been no exception.

The fact that the last thirty years of UK government has spanned the emergence and maturation of NPM makes this research as much about the understanding of CCS *per se* as it is about the role that NPM has played in shaping and perpetuating CCS throughout. Understanding CCS implies understanding the role that NPM and its constituent dynamics have played, and in this sense, its universal aspects must be seen in this specific historical context. We might ask here to what extent CCS can be seen as a product of NPM change. Does it mean that as NPM evolved into something else, we begin to see the alleviation of CCS and a new horizon resolution to its constituent pathologies and problems? Surely a truly chronic condition would suggest timeless and universal explanatory factors, which can be separated from specific qualitative change over time. Even if it is possible to isolate universal dynamics, it is also pretty much

meaningless to do so without factoring in salience of these specific historical waves of change. As historical institutionalist studies of public sector organizations and systems have argued, it is difficult to draw conclusions about one without drawing conclusions about the other.<sup>17</sup> As Pollitt (2008) points out, ‘no-one said that everything is path dependent or that everything runs in cycles. It is entirely possible, indeed likely, that both types of pattern exist, sometimes side by side or one inside the other’ (p71). Any understanding of chronicness therefore requires some kind of integration between universalistic theories of social behaviour, and historically specific accounts of governance and public management change.

#### **1.4 Why we need a more integrated approach**

If each of these three groups of explanations have useful things to say about CCS, then by definition, there must be limits to how far each one independently can bring us in understanding its dynamics in the entirety. Logically, it is possible to criticize each of the three approaches from the perspective of the other two. Rational choice explanations may be seen as reductionist from a cultural theory perspective, in that the assumption of rational self-interest limits the scope of explaining social or organizational phenomena to the ‘individualist’ quadrant of the cultural matrix. Governance approaches may be inclined to make similar arguments about rational choice, in the sense that they aspire to a hypothetical position of optimal alignment of incentives and utilities across actors involved in a game, but downplay the realpolitik implications of political power broking and the use of political power for its own sake.<sup>18</sup>

Cultural theory explanations of capacity stress are no less immune to criticism. For rational choicers, the idea that organizational culture could be a sufficient independent variable explaining behaviour of individual actors in a public policy system underestimates the instrumental ability of these actors to act independently of culture - either to ignore culture or actively attempt to change culture. If one is fatalistic about one aspect of life, it is entirely possible to be individualistic about another. Similarly, it is possible to give the impression of being fatalistic for strategic purposes, perhaps to elicit individualistic benefits. A similar argument can be made from a governance perspective, in the sense that government and ministers, within the constraints of the parliamentary system, have policy-making power and executive authority to shape and reshape the

system by their own design - again, regardless of its cultural characteristics. See **Table 1.4**.

**Table 1.4 Three competing theoretical explanations and their limits**

<b>Three types of theoretical explanations for capacity stress</b>			
	<b>Strategic actor and rational choice (RC)</b>	<b>Cultural Theory (CT)</b>	<b>Governance and steering (GOV)</b>
<b>Methodological point of focus</b>	Individual actors, structured incentives, 'rational' self-interest, and alignment of incentives	Shared values and beliefs held by groups of individuals, and institutionalized conventions and artefacts	Architecture of the system and the ability of political elites to 'steer' desired outcomes
<b>Main reason for capacity stress</b>	Misalignment in the structure of incentives amongst individual actors	Capacity stress is a function of prevailing cultural norms and contestation between them	Institutional complexity, and imperfect or incoherent steering by political elites
<b>Limits of the explanation from the perspective of the other two standpoints</b>	<p><b>CT</b> Culturally reductionist and overlooks adaptive capacity of individual actors</p> <p><b>GOV</b> Deprioritizes existing political and power relationships in the system</p>	<p><b>RC</b> Assigns too much importance to culture as an independent variable, and is vague about how causes individual action</p> <p><b>GOV</b> Political elites have power and autonomy to shape the system regardless of its cultural norms</p>	<p><b>CT</b> Assumes too narrow a conception of institutional variations, and is therefore reductionist</p> <p><b>RC</b> Assumes narrow conception of agency by focusing on top-down steering by political elites</p>

**Note:** In line 3, criticisms from the perspective of the other two theoretical approaches are indicated by respective letters CT, GOV, or RC.

Governance explanations lead us to reflect on the architecture of the system as a whole, and inherent 'politicalness' involved in steering. For cultural theorists, however, governance theory may tend towards excessively narrow appreciation of the cultural variation inherent in institutions. As Goetz (2008) points out above, an approach which

treats a public policy system too mechanistically runs the risk of neutralizing important aspects of cultural equilibrium which keep the system stable and which to some extent feed into sustaining chronic conditions. For rational choicers, governance approaches run the risk of having rather weak conceptions of individual agency and the dynamics which shape the choices and behaviour of individual actors. This point is not lost on critics who have been associated with governance traditions over the years.<sup>19</sup>

Inherently therefore, each of these explanations have limitations from the perspective of the other two. It is however the limitations inherent in the specific application of these explanations to understanding CCS in large and complex public policy systems, which are of direct interest here. How do these explanations fall short in helping us to understand chronic conditions in a large and complex public policy system? For a start, chronic problems tend to resist single-factor or reductionist causal dynamics, and rather consist of multi-factor and deeply inter-related dynamics, which are aggravating and compensating rather than unilinear and causal. Any theoretical approach to a chronic problem is therefore likely to require hypotheses in the form of a ‘problematique’,<sup>20</sup> which is able to integrate aspects of strategic agency, culture, and more overarching system-wide perspectives. It is also in the nature of chronic problems that they tend to reside or remain in the system for long periods of time. The problems may start as symptoms or signs of deeper aggravating and compensating dynamics, but as they develop, they may become ‘reified’ into causes of further dysfunction in the system. The distinction between cause and symptom inevitably becomes blurred. Symptoms may become the focus for alleviation and mitigation, and remedies treat the symptoms rather than the causes.

The deployment of different theoretical approaches must therefore involve a non-zero sum game in which all have something useful to contribute to a more integrated appreciation of the problem. This need not aspire to a tightly-coupled ‘grand theory’ of CCS. Nevertheless, it should be a theory-based approach which leaves scope for this non-zero sum characteristic. Social behaviour and institutional life of public policy systems are complicated. The narrower one scopes a problem, the more tractable it appears. Yet the wider one scopes the same problem, the more uncertain this sense of tractability becomes. The challenge is to set the focal length appropriately in order to understand the ‘whole’, as well as the atomized dynamics which make it add up to a

whole in the first place. Each of the three explanations discussed in this chapter must undoubtedly play a part in lending substance to any overarching and integrated approach.

This is where the next chapter heads. I examine how this non-zero sum theoretical approach might be constructed from the modular parts discussed in this chapter. As I will argue, the fundamental problem of CCS must still be seen as a general governance problem, but unlike the specific characterization of governance in this chapter, it must incorporate a more systematic account of agency and culture, and the way in which these factors interact dynamically to sustain CCS. I hope to persuade the reader that the condition of CCS in the prison system, as well as in other public policy systems, is best understood as a ‘whole system’ or a holistic problem. We have thrown nothing away in our evaluation of competing theoretical approaches in this chapter. The landscape has not been cleared by any means. It has merely been cautiously and constructively dismantled and modularized, ready for reconstruction in the next chapter.

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<sup>2</sup> See Easton, 1965, p23.

<sup>3</sup> I use the term ‘individual actors’ to denote generic and definable groups of individuals such as ministers, top officials, or governors.

<sup>4</sup> Milgrom and Roberts (1992) explain that organizational decisions and actions can be treated as ‘outcomes either of strategic interplay among self-interested people responding to incentives designed to influence behaviour, or of collective or managerial attempts to compromise the interests of the parties affected by the decisions’ (p39).

<sup>5</sup> Scharpf (1997) argues that ‘thorough understanding of the underlying constellation is an essential precondition for the explanation and prediction of interaction outcomes’ (p16). Besley (2006) refers to this as ‘constitutions as constraints on self-interest (*i.e.* rules or frameworks in which the game of government is played)’ (p29).

<sup>6</sup> Horn (1995) argues that legislators face four principal transaction cost dilemmas when intervening with administrators. First, they seek to *minimize time and effort* taken to define and present the legislative deal in a way that increases its benefits to supporters or reduces the cost it imposes on political opponents. Second, they seek to *maximize long term commitment* to their legislative reforms in the face of future legislation by other coalitions. Third, they seek to *minimize agency costs* by ensuring administrative compliance. Fourth, they seek to *minimize the transaction costs of uncertainty*. This involves allocating responsibility for collaborative outputs to the level most easily able to absorb the impact of any failure (p14).

<sup>7</sup> Critics have shown how large-scale natural disasters often show syndromes of *ex-ante* under-investment followed by *ex-post* bouts of political hyperactivity and over-investment (Depoorter, 2006; Healy and Malhotra, 2009).

<sup>8</sup> Lacey does not model her ‘prisoners’ dilemma’ in any formal or systematic way, but merely evokes the concept to illustrate her argument.

<sup>9</sup> The fifth archetype, the ‘hermit’, and denotes a worldview devoid of any conception of social solidarity.

<sup>10</sup> Formal written rules, orders, and instructions have played an important part in the culture and regulation of the prison system. The ‘Prison Rules’ (see, SI, 1949, 1964, 1999) provide a top level set of statutory rules. Also Prison Service Orders (PSO) and Prison Service Instructions (PSI) form an architecture of operational rules for managers,

governors, and staff.

<sup>11</sup> Goffman (1961) describes a 'total institution' as a 'place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life' (p11).

<sup>12</sup> Wilson (2000) characterizes prisons as 'coping institutions' because of the difficulties which society encounters in monitoring both outputs and outcomes of prison activities.

<sup>13</sup> Discussions on challenges of governance and ungovernability of the British state emerged from the late 1970s (Rose, 1979 and 1980). Governance literature expanded throughout the 1990s, associated with discussions and criticisms of New Public Management (Aucoin, 1990; Dunsire, 1990; Rhodes, 1996), particularly on complex and variegated patterns of public administration and management, and integration of private sector firms and markets into public management. Throughout the 2000s, the concept of governance also encompasses a set of responses to NPM, particularly themes of reintegration and 'joining up' of public services. Key authors in these respects have been Peters, 2000; Peters and Savoie, 2010; Kooimann, 2003; Pierre and Peters, 2005; Duit and Galaz, 2008; and Gamble and Thomas, 2010.

<sup>14</sup> Dunsire (1990) argues that 'control has to be hierarchical, system-within-systems; the 'top' or 'centre' is only 'in control' if it is able to harness the control being maintained level by level, function by function, attribute by attribute, throughout the complex' (p7).

<sup>15</sup> During this era, political scientists increasingly drew attention to problems of 'ungovernability' and 'overload' in the UK state. See for discussion, King 1975; Rose, 1979 and 1980; Parsons, 1982; Foster and Plowden, 1996.

<sup>16</sup> See for general discussion of NPM doctrines of 'agencification' and separation of policy and implementation, Hood, 1991 and 1995; Dunleavy, 1997; James, 2003; Christensen and Lægraud, 2002; Pollitt et al., 2004a and 2004b.

<sup>17</sup> See for discussion of continuity and change in public policy systems, Smith, 1988; Steinmo et al., 1992; Pollitt, 2008; Pollitt and Bouckaert, 2009.

<sup>18</sup> Goetz (2008) points out that that governance theories which accentuate alignment and cost-benefit approaches run the risk of neglecting the 'eminently political motive of gaining and maintaining political power for its own sake [...]' (p272).

<sup>19</sup> Peters (2010) points out, 'largely structural definitions do tend to provide relatively little place for agency in processes of governance. Although the structures are important for shaping decisions and for channeling the activity of individuals and political groups, it is important to remember that the actual decisions made are by the individuals, whether as single actors or through interactions' (p16). Casting a critical eye over governance approaches, he suggests that they 'do not have any explicit mechanisms of integrating individuals and structures' (p17).

<sup>20</sup> See Warfield and Perino (1999) and Warfield (2003) for discussion on design and use of problematiques. Warfield and Perino (1999) explain that 'problematiques portray graphically how a set of problems is interrelated, in terms of influencing each other. In addition the relationship pictured is typically one of significant aggravation rather than the more commonly invoked causality [...] Problem A aggravates Problem B which in turn aggravates Problem C. By inference, Problem A also aggravates Problem C' (p224).

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## *Chapter 2*

### **A more holistic governance-style approach**

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*If we know how systems manage to cope with stress, how they manage to persist in the face of either stable or changing environments, other theories or sets of ideas aspiring to theoretical status that deal with various aspects of political life - decision-making, coalition strategies, game theories, power, and group analysis - all fit into place. They are no longer alternative or competing modes of analysis; they represent partial theories of allocation, referring to and explaining some special part or aspect of a political system.<sup>21</sup>*

The three sets of explanations – strategic actor, cultural theory, and governance – have all helped to shed light on different dimensions of chronic capacity stress (CCS). Each in its own way provides an important dimension of any overall explanation. We have started with an atomized focus on the individual actors making up the system, and the way in which they interact. We have added into that a cultural and institutional aspect, taking into account the role of values, worldviews, and beliefs. And, finally, we have taken a step back to look at the architecture and governance of the system as a whole, and to identify how characteristics of New Public Management (NPM) may have fed into and sustained CCS.

Described in this way, we begin to see how these three distinct approaches might be integrated in order to understand the aggravating and compensating dynamics at the heart of CCS. As the last chapter has shown, each of these three approaches is constituent but also has limitations, and as the quotation above suggests, the trick must be to find a way to fit them into a more encompassing and dynamic structure of

explanation in order to analyse the condition as a whole. How then should we integrate these approaches into a more holistic governance-style approach? This is the challenge in this chapter.

I use the term ‘holistic’ here cautiously, as it has been the subject of scepticism over the years as an everything-and-nothing term, which talks in terms of a need for more expansive explanations, yet in doing so, by definition, limits the scope for identifying actual specific explanations which do explanatory work (Phillips, 1976).<sup>22</sup> With caution in mind, therefore, I argue that the broad approach in this chapter is holistic in the sense that it is based on a fundamental set of relationships between three themes which have long been central to political science. These envisage a public policy system as [1] being shaped by value-based goals, [2] as having specific characteristics of organizational design, and [3] as existing in and as part of an external environment which both influences and is influenced by the system itself.

Four inter-relationships between these three themes form the basis for the holistic approach. Two focus on the two-way and dynamic relationships between value-based goals and the design of the system itself. The other two focus on how each of these factors relate to their external environment. I develop a hypothetical *problematique* incorporating these four relationships (Warfield, 1999). I sketch out the four relationships with specific references to prisons, and discuss how each one may potentially feed into maintaining crowding and CCS. The *problematique* provides a tool for seeing that public policy systems neither completely excel nor completely fail in the things they do, but combine aspects of both. The broad idea is that for the system to retain functional equilibrium, it must find a balance between aggravating and compensating dynamics.

## **2.1 The ‘holistic trinity’ – values, system, and environment**

We left off at the end of the last chapter with the idea that we had prepared some building blocks of possible theoretical explanations for CCS, and laid them ready for reorganization and reconstruction. The idea in this chapter is to start to build them back up again around three themes – values, system, and environment – and key inter-relationships and alignments between them. In this sense, we are reconstructing an explanatory framework which incorporates characteristics of each these theoretical

approaches, but builds them into a more integrated picture of a public policy system operating in its external environment and temporally through time. The idea is that, rather than looking for meaningful distinctions and cleavages along theoretical lines, we are looking for them along analytical lines, and building these theoretical approaches into the process.

Political scientists have long been interested in the relationship between the things which make up political systems and the environments in which they operate. In the late 1940s, Dahl (1947) identified three intellectual and practical problems facing public administration: how to reconcile inherently competing values into public policy (p1); compensating for the vagaries of human behaviour in the design of public policy systems (p4); and the problem of controlling for impacts from the external environment (p8). Throughout the 1960s, political scientists began to recast problems of public administration into the language of political systems and systems analysis. Easton (1965 and 1967) argued that political life should be understood as a ‘system of behaviour imbedded in an environment to the influences of which the political system itself is exposed and in turn reacts’ (1967, p17). In 1972, Schick wrote that the ‘central metaphor of the old politics and budgeting was process; the key metaphor of the new politics and budgeting is systems’ (p78). ‘Systems politics’, he states, ‘takes a relatively holistic view of objectives compared to the partial view associated with process politics’ (p80). And throughout the 1980s, literature on policy analysis also highlighted interdependency between value, system, and environment (Carley, 1980; Dunn, 1981).<sup>23</sup>

Management economists writing on the performance of private sector firms also draw heavily on these three themes. Roberts (2004) argues that high performance in a firm results from ‘establishing and maintaining alignment across three elements: the strategy of the firm, organizational design, and the environment in which it operates’ (p12). The challenge therefore ‘becomes one of selecting the (long run) value-maximizing strategy for the particular environment and then creating the organization that will best realize it’ (p22). Explicit in his approach is the understanding that values are multifaceted and hence require ‘value-maximizing’ conciliation. Also, organizational design involves finding ways to motivate and coordinate across the system in order to manage vagaries of human behaviour.

We can easily transpose the discussion of the three theoretical approaches onto the holistic trinity. Reading down the columns in **Table 2.1**, each of the three theoretical approaches can be layered on top of each other to give an increasingly expansive picture of each theme. For example, we can start by analysing the theme of reconciling value-based goals in terms of the way in which incentives working on key individual actors are aligned towards particular outcomes. But we must understand this alignment in terms of the prevailing cultures, which reinforce or undermine this process of reconciliation. Finally, we can understand the overall outcome of reconciliation of value-based goals as a product of the system as a whole, a collective outcome of all the strategic actor and cultural dynamics at work. We can read down in a similar way for ‘system design’ and ‘environment’.

**Table 2.1 Transposing the holistic trinity onto the three theoretical approaches**

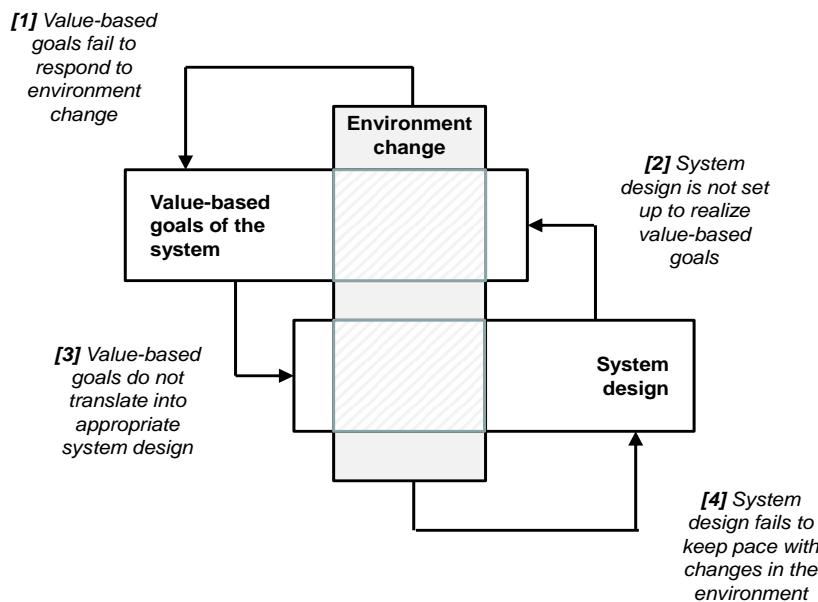
Three aspects of the holistic trinity			
	Value-based goals	System design	Environment
<b>Strategic actor and rational choice</b>	Aligning incentives of actors to work towards reconciling competing value-based goals	Aligning incentives in the system so that actors work towards value-based goals	Aligning incentives to respond to inherent uncertainty in external environment
<b>Cultural theory</b>	Understanding how cultures reinforce or undermine this process of reconciliation.	Understanding how cultures reinforce or undermine achieving these goals.	Understanding how cultures reinforce or undermine this ability to respond.
<b>Governance, architecture, and steering</b>	Ensuring overall acceptance and commitment to value-based goals	Ensuring overall coherence in the way the system works towards achieving goals.	Ensuring overall responsiveness to uncertainty in external environment

As Roberts (2004) reminds us, it is the degree of alignment across these three aspects, which is key to the holistic approach. The next step therefore is to consider how the relationships between the three aspects sustain equilibrium in the system, and how CCS can be seen as the outcome of misalignments across these relationships. **Figure 2.1** sketches the three aspects, and four potential misalignments. The schema is holistic because its analytical structure is self-contained and exhaustive, in that it encompasses

all the possible factors which could play a part in CCS. Four potential misalignments may exist:

1. Value-based goals fail to respond to environment change;
2. System design is not set up to realize value-based goals;
3. Value-based goals do not translate into appropriate system design; *and*
4. System design fails to keep pace with the changes in the environment.

**Figure 2.1 Integrating the trinity in a holistic relationship, and four potential misalignments**



Thinking about the system in this way helps to understand how equilibria can be the product of aggravating and compensating dynamics within. In order to maintain equilibrium, it is necessary that aggravating factors resulting from misalignments are compensated by adjustments in other relationships. Say, for example, that value-based goals may be under pressure to respond to new environmental changes [1]. This will be, to a large degree, dependent on the extent to which system design is itself able to respond to cope with the new requirements from these changes [2]. If deficiencies in system design constrain this ability to respond, then this will perpetuate misalignment with the environment, and a feedback effect whereby those responsible for setting the value-based goals of the system blame bad design of the system itself. Similarly, system design is likely to be subject to imposed change from above in response to new value-

based goals. However, the fact that the system may be lagging in terms of its ability to keep pace with modern cultures and working practices [4] is likely to constrain the extent to which it is actually able to implement changes. Again, this is likely to feed back into fatalistic views about the extent to which value-based reform is actually possible in a system which is inherently constrained by being out of kilter with its environment.

This inherently adaptive capacity of public policy systems has long been a central theme in systems analytical approaches. For Easton (1967), the idea of persistence of political systems is ‘intricately connected with the capacity of a political system, as an open, self-regulating, and goal-setting system, to change itself’ (p479). As Easton explains:

In thus raising the question of the nature of the response to stress, it will become apparent, in due course that the special objective and merit of a systems analysis of political life is that it permits us to interpret the behaviour of members in a system in the light of the consequences it has for alleviating or aggravating stress upon the essential variables (1967, p25)

We see similar strands of thinking in subsequent systems-oriented theory. Critics have interpreted the Luhmann’s (1986) concept of ‘autopoiesis’ to highlight nuanced adaptive impacts of system in their environment (Kickert, 1993; Brans and Rossbach, 1997).

Brans and Rossbach (1997) interpret Luhmann to be saying that a social system ‘selectively transforms problems it finds in its environment into internal – systemic – problems’ (p421). ‘These problems’, they point out, ‘are not solved but reformulated, simplified, limited, distributed so that the system can deal with them. The system builds defensive internal complexity against the pressure of an environment which is always too complex’ (p421). This echoes Crozierian arguments from the previous chapter. It also highlights the inherent constraints on a complex system to be continually and optimally aligned to changes in the external environment.

This theme of inherent constraint in being able to achieve optimal alignment across the system is also strongly evident in management economics. Critics have acknowledged inherent difficulties in achieving optimal alignment, and in this sense, sub-optimal alignment may be the best that we can hope for. Cyert and March (2001), for example, point out that the ‘firm is constrained by the uncertainty of its environment,

the problems of maintaining a viable coalition, and the limitations on its capacity as a system for assembling, storing and utilizing information. As a result, the firm is as an ‘adaptively rational’ system rather than an ‘omnisciently rational’ system (p117).

Roberts (2004) as well points out that ‘difficulties of organizational change imply that there is value in an organizational design that will perform reasonably well in a variety of environments even if it is not perfectly suited to the current context’ (p67). CCS may therefore be seen as an inherent function of a complex system finding ways to run in manageably and/or acceptably sub-optimal ways.

In recent decades, public administration theorists have looked to complexity theory from theoretical biology as a basis for understanding complexity in public policy systems.<sup>24</sup> These critics accentuate the unpredictability and uncontrollability of outcomes in large and complex systems, and explain this uncertainty through inherent adaptation of human actors involved (echoing very much Dahl’s observations 60 years earlier!). As Teisman et al. (2009) argue, ‘actors in social systems are reflexive: they respond, anticipate, plan, think, forecast, etc. [...] In the domain of public administration this means that actors can choose, within certain degrees of freedom, a certain response to a certain situation but also contradictory to the intention of the intervention’ (p7). Adaptation in systems therefore undermines an assumption of *ceteris paribus*, that component parts of systems will act consistently and predictively in response to particular interventions. A capacity of the system to ‘self-organize’ means that new structures are enforced by local interaction, but they come about ‘without the imposition of any external or internal actors’ (Teisman et al., 2009, p9). Hence, complexity theorists tend to reject the idea that systems can be controlled or steered or manipulated by political elites, or for that matter, any other actor (Klijn and Snellen, 2009, p34).<sup>25</sup>

Actual empirical application of complexity theory to public policy problems is still relatively thin on the ground, and some critics have expressed doubt on the extent to which complexity theory brings anything new to political science that it did not already have (Pollitt, 2009a). It is probably the case that we do not necessarily need a ready-made ‘theory’ of complexity in order to understand public policy complexity in itself. For this runs the risk of putting the theoretical cart before the empirical horse. Nevertheless, these themes of inherent adaptation by actors and the limitations on their ability to influence the system are seen as important aspects in my concept of

‘constrained autonomy’ in later chapters. For, as the top row of Table 2.1 suggests, it is individual actors who do the acting, even though it must be seen in wider cultural and governance contexts. It is individual actors, in the abstract sense, who animate the system and make it work. Constrained autonomy characterizes the predicaments of individual actors within, who must find ways of managing their own predicaments, and to some degree or another, sustaining manageable and acceptable – if not necessarily, optimal – equilibria for themselves and the actors under their responsibility.

I leave this concept of constrained autonomy alone until later chapters. In the next four sections of this chapter, the focus turns to developing the four potential misalignments in Figure 2.1 above, with specific reference to crowding and CCS in the prison system during the last thirty years. In doing so, I draw on existing literature on the prison system, and integrate it into the development of the four potential misalignments of the holistic model. The outcome of this is a more expansive and prison-specific problematique which will help us to understand crowding as an example of visible manifestation of CCS.

## **2.2 Value-based goals of prison in a changing environment**

Society changes and with it what we expect or demand from our public services. With advancements in knowledge and technologies, expectations and ambitions increase about what is possible from instrumental interventions by public services. New pressures in society also emerge which test the prevailing values and goals of public sector systems. If important changes occur, we might expect value-based goals upon which the system acts to be responsive enough change with them. If value-based goals of the system lag or are out of kilter with changes in environment, then this may be a cause of capacity stress, either in itself or in terms of the effect it has on the rest of the system. Value-based goals may be too ambiguous or not robust enough to maintain clarity in terms of what the system seeks to achieve. Or some value-based goals may be too dominant or comparatively more dominant than others, and hence become out of kilter with the environment in which it operates.

Since the Victorian era, the value-based goals of prison have been multi-faceted and have involved inherent trade-offs and tensions. Thickset accounts of the history of prison system in England and Wales have captured the shifts in goal ambiguity over the

decades, and there is insufficient space to replay here the details of this complex story (Ruggles-Brise, 1921; Fox, 1952; McConville, 1981). From this early era, historical accounts capture an inherent tension between two goals of prison – deterrence and reform – which have retained their resonance throughout the modern era.<sup>26</sup> As Ruggles-Brise wrote in 1921, these two principal features began to ‘assume a definite shape’ from the mid-nineteenth century onwards, one which ‘has been retained, subject to modification, until the present day’ (p66). Critics have argued that reformative principles however tended to be secondary to deterrence throughout the nineteenth century. McConville (1981) describes ‘an almost total collapse’ of the reformative principle after 1850’ (p349). And as the prison population began to grow from 1945 onwards, the pressures on the reformative principle of prison grew too. The picture is complicated however. Official documentation of the prison system from the 1960s onwards has systematically referenced its rehabilitative goals. **Table 2.2** gives an overview of relevant specific statements in annual reports since 1979. Clearly, the rehabilitative goal has been very much part of the official approach.

The view that the rehabilitative goal has lost credibility has been pervasive in academic writing for at least the last thirty years (Bottoms, 1980; Garland, 2001; Cavadino and Dignan, 2003 and 2006). In 1980, Bottoms wrote pessimistically that the ‘abandonment of the rehabilitative ethic has led to a widespread abandonment of hope’ (p20).<sup>27</sup> And as prison populations and crowding have risen in the UK and in other developed countries, scepticism on rehabilitative goals has intensified. Garland (2001) argues that this weakening has been characteristic of many modern penal systems in that they ‘focus more and more upon their ability to hold offenders securely in custody and are much more circumspect in claiming the capacity to produce rehabilitative effects’ (p119). Cavadino and Dignan (2003) have written specifically about a ‘crisis of legitimacy’ in the British prison system, which they argue, has its roots in what they call the ‘collapse of rehabilitative ideal’ (p21).

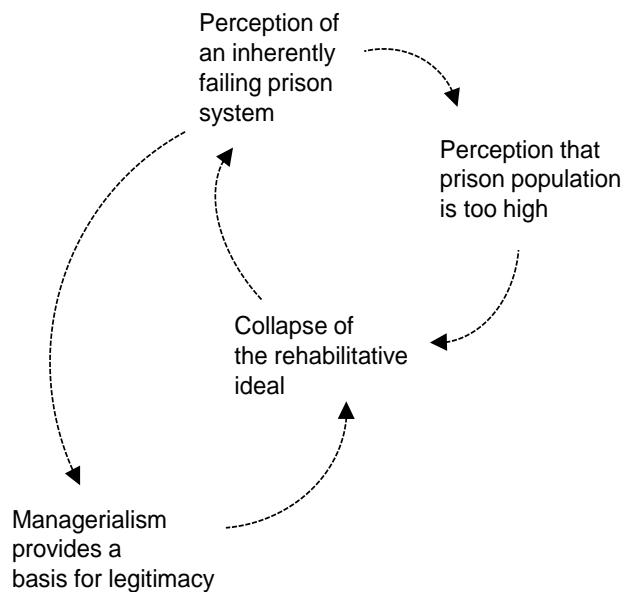
**Table 2.2. Overview of references to rehabilitative goals in annual reports**

<b>Specific text in the annual report relating to rehabilitative goals</b>	
1980	‘Positive custody’ would be based on the ‘ <b>admirable things being done in the name of treatment and training</b> ’ but it would also reflect what the May Committee saw as society’s diminished expectation of the potential of the prison service to rehabilitate the majority of offenders committed to its charge.
1983 to 1989	<i>First working definition of the Prison Service.</i> 7(iv) to enable prisoners to retain links with the community and, where possible, prepare them for their return to it. (Note from 1984, text changed to ‘ <b>assist them to prepare for their return to it</b> ’)
1990 to 1998	<i>As statement of purpose.</i> Our duty is to look after (prisoners) with humanity and <b>help them to lead law-abiding and useful lives</b> in custody and after release.
1992 to 1997	<i>More detailed expression of goals six stated goals which include:</i> To provide positive regimes which help prisoners address their offending behaviour and allow them as full and responsible life as possible. To <b>help prisoners prepare for their return to the community</b> .
1994 onwards	<i>Move to reporting performance against targets relating to rehabilitative programmes.</i> For example, Key Performance Indicator 7 ‘the number of prisoners completing programmes <b>accredited in reducing reoffending</b> ’
1998 to 2003	<i>Statement of purpose.</i> Prison Service is an Executive Agency of the Home Office working with others in the criminal justice system to deliver the Home Office aim (4) of effective execution of the sentences of the courts so as to <b>reduce reoffending and protect the public</b> . <i>Objectives.</i> To reduce crime by providing constructive regimes which address offending behaviour, improve educational and work skills, and <b>promote law abiding behaviour in custody and after release</b> .
2004 to 2005	<i>Statement of Priorities as part of NOMS. Reducing re-offending and improving prisoners' prospects on release.</i> This was central to our agenda and efforts were made to direct extra resources to this work.
2006	The agreed priorities for the Service were as follows. Number 1 in the list was <b>Reducing Re-offending</b>
2007 onwards	<i>NOMS Statement of Purpose.</i> We work to <b>protect the public and reduce reoffending</b> by delivering the punishment and orders of the courts and by helping offenders to reform their lives. <i>NOMS Vision.</i> As part of the wider justice service we will give the public confidence in our ability to protect the public and <b>reduce reoffending</b> .

**Source:** Prison Department, Prison Service, and National Offender Management Service (NOMS) annual reports.

As far as the literature is concerned, this putative weakening of the rehabilitative ideal is closely linked to fatalistic views which see prison as a kind of permanently or inherently failing system. **Figure 2.2** depicts this aggravating relationship in simple

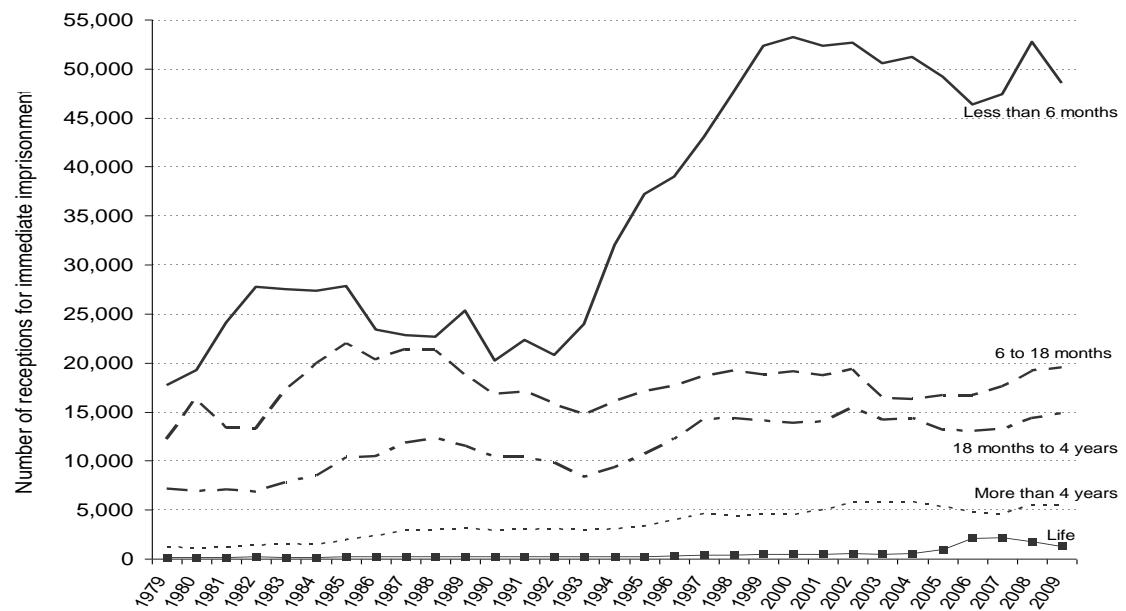
**Figure 2.2 Collapse of the rehabilitative ideal**



looped form. First, the perception of an inherently failing system feeds into the perception that the prison population is ever too high. Reviewing prisons literature over the decades, it is striking how many academics and prison professionals have argued this point, namely that governments send too many people to prison, and that they have presided over 'excessive' increases in the prison population.<sup>28</sup> Such demand-side interpretations of CCS have been prevalent throughout the last three decades in disciplines of criminology and penal studies.<sup>29</sup> King et al. (1980), for example, wrote the following about the system in England and Wales, at a time when the prison population was half the size of the prison population in 2009.

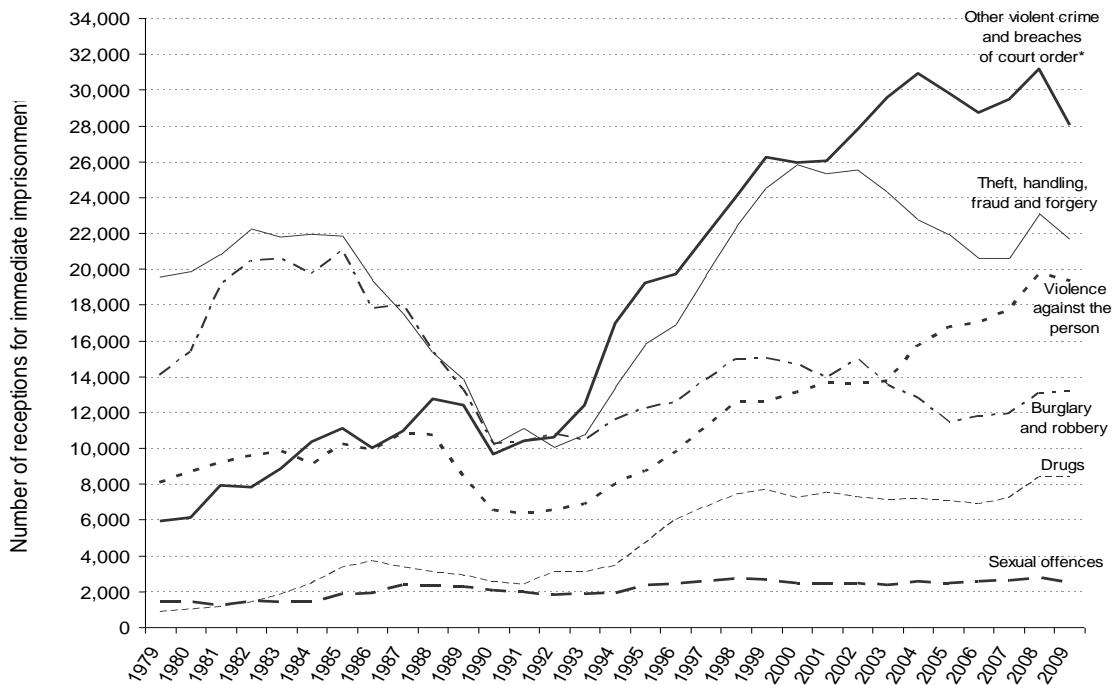
We know of no statement of informed opinion suggesting anything other than our prison population is unnecessarily large and that a substantial number of persons currently receiving custodial sentences could be adequately controlled or better treated in the community. Indeed this view has been expressed by successive Home Secretaries, by both major political parties, by the all-party House of Commons Expenditure Committee, by the Home Office, by prison governors and officers, by penal reform groups and by academic specialists (p60).

**Figure 2.3: Number of receptions of prisoners sentenced to immediate imprisonment, by length of sentence**



Source: Home Office and Ministry of Justice prison population statistics, 1979 to 2009.

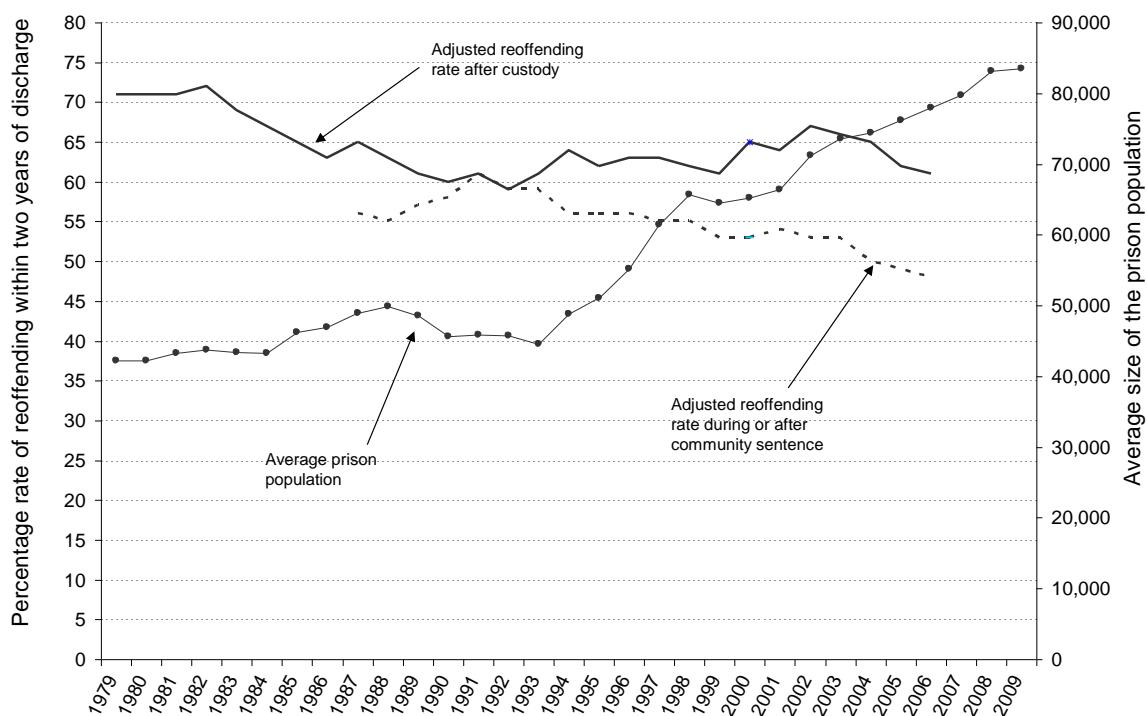
**Figure 2.4: Number of receptions of prisoners sentenced to immediate imprisonment, by type of offence<sup>30</sup>**



Source: Home Office and Ministry of Justice prison population statistics, 1979 to 2009.

We can reflect here on the relativized relationship between actual increase in the size of the prison population, and more ideologically-based perceptions about the optimal size of the prison population. As **Figures 2.3 and 2.4** show, since the early 1990s the system has had to respond to a rapid rise in the size of the short-term prison population (sentenced to less than six months), and this very striking increase has done much to fuel this perception about excessively large prison populations. The increase in the short-sentence prison population since the mid-1990s and continued argumentation around the failure of prison and the collapse of the rehabilitative ideal seem closely related over the years.

**Figure 2.5: Reoffending rates for adult males, within two years of discharge from custody**



Source: Ministry of Justice statistics on reoffending rates, 2010.

Perceptions of excessively high prison population have tended to feed back into fatalistic views about what can be done in terms of rehabilitation. Garland (2001) argues that such pessimism has been prevalent in criminal justice systems generally during the last quarter of a century, ‘the period in which the criminal justice system came to be viewed primarily in terms of its limitations and propensity for failure rather than its prospects for

future success' (p107). Looking at rates of reoffending amongst male adult prisoners (within two years of discharge) in **Figure 2.5**, it is striking how little variation there has been in the basic rate over thirty years. One may point out, as many officials do, that reoffending rates have dropped since the creation of the National Offender Management Service (NOMS), and that this has been largely to do with a more direct focus on reoffending and more integrated working structures between prisons and probation. This may be true to an extent, but it is still the case that rates have only reduced to the levels they were at in the early 1990s. This is hardly improvement over the long term. See Annex C for further details on NOMS.

Academics and practitioners over the years have also put forward the view that prisons should not be expected to rehabilitate prisoners, particularly those who are in custody for short periods of time (less than six months). This general view is reflected in the reference to 'diminished expectation' in the first row of Table 2.2. above. Similar scepticism is found in practitioner accounts. Coyle (1994), for example, implies fundamental scepticism.

The first prison reformers had started out with the simple aim of improving prison conditions for their own sake, of making prisons places which were clean, well-ordered and where prisoners were treated decently. Where this later went wrong was that the humane and decent treatment of people in prison was linked to some vague principle of what became known as reform or rehabilitation (p19).

In the last chapter, we have seen how the values of managerialism and NPM have spread across the public sector, and have provided a particular type of legitimacy for public services. Legitimacy is based in concepts of performance management, strong centralized coordination and devolution of operational tasks, and creation of output targets, which set the parameters of success and failure of the system. In this sense, managerialism has been the programmed response to perceived failure in the system. For many critics, however, managerialism has also, paradoxically, perpetuated failure. Cavadino and Dignan (2003 and 2006) identify a 'penal crisis' which, they argue, has emerged from a form of 'penological pragmatism', in other words, 'attempting to manage the resources crisis with no clear or coherent philosophical or other theoretical basis' (2003, p30). For these critics, excessive managerialism has been a major part of the problem, targeting a material crisis of resources rather than a deeper 'crisis of

legitimacy' about the use of prison and principles which underpin it. As Figure 2.2 shows, managerialism can be seen as a compensating response to perceptions of failure. Yet it is also seen as feeding into this putative collapse of rehabilitative goals. Paradoxically, managerialism may be seen as the basis for demonstrating legitimacy of performance, but also for weakening the focus on the rehabilitative ideal. I return to this important point in the next chapter.

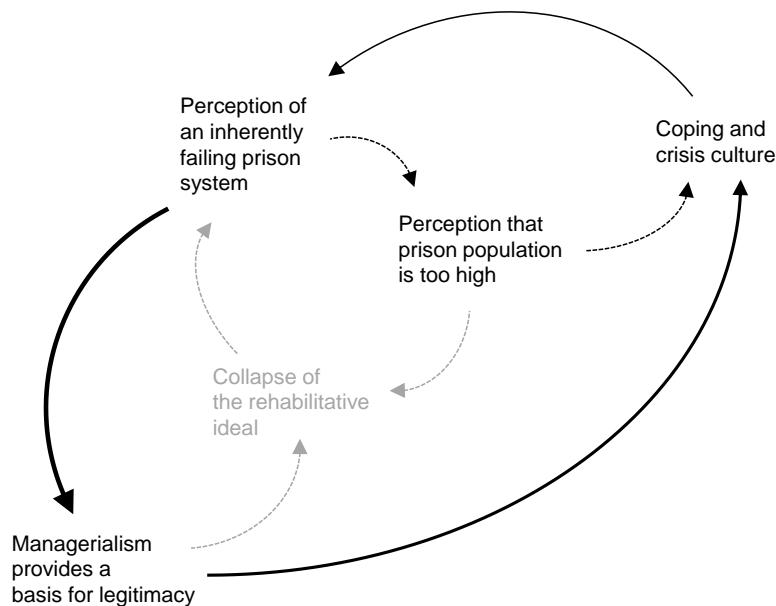
### **2.3 System design and realizing value-based goals**

Whatever the value-based goals of prison, the system itself will have to be set up appropriately to have a chance of fulfilling them. This basic ability to respond to and realize value-based goals, and cope with the demands involved, is the second aspect of the holistic schema. Misalignment here may emerge from the inability of the system to meet the demands made on it. This may be the result of any number of factors. Financial or human resources may be insufficient. Design of the structures and institutions may be incoherent or ineffective. Mechanisms in place to motivate, incentivize or control actors may be dysfunctional. Or there may just be a lack of popular or political prioritization of system reform. Any of these factors, and others, may contribute to the system lagging behind or having to struggle to cope with the value-based goals set for it.

Over the decades, there has been a strong theme of coping and crisis in the prisons literature (Weiler, 1992). Numerous accounts throughout the 1970s and 1980s, and indeed much of the 1990s, are scathingly critical about the state of British prisons, levels of under-investment, generally indecent conditions, and dysfunctional working cultures.<sup>31</sup> These factors severely constrained the ability of the system to achieve even basic goals of decency and order. King and McDermott's (1989) article on the 'ever-deepening crisis' in British prisons from 1970 to 1987 found severe inadequacies in crowding and accommodation, as well as evidence that prisoners were locked up in their cells for long periods of time despite relative increase in the numbers of prison staff (p126). Indeed, at the start of the 1980s, King and colleagues (1980) argued that government should scale down its ambitions for prison to a kind of back-to-basics concept of 'humane containment', which would at least establish some kind minimum standard of decency before it even began to think about more ambitious rehabilitative goals (p25).

Some critics have pointed out that this emphasis on coping and crisis has been part of the culture of criticism of prisons over the decades. Dunbar and Langdon (1998) remind us that ‘writers on prisons customarily engage in a dialogue with themselves about whether the prisons can be said to be in a state of crisis, and if so, what kind of crisis’. They continue, ‘in the 1980s, it was easy to diagnose a crisis on many dimensions, since the system was quite evidently near breakdown and many of the shortcomings identified in the Woolf report were glaringly obvious. It would be untrue and unhelpful to say that the present situation is just the same’ (p149). Managerialism has played its part here. As Hood and colleagues (2004) show, the combination of management through hierarchical ‘oversight’ and egalitarian ‘control through mutuality’ have been important cultural factors in the way in which control over the system has been maintained throughout the 1990s and early 2000s.

**Figure 2.6 Adding in the ‘coping and crisis culture’ loop**



**Figure 2.6** develops the previous looped Figure 2.5 by adding this new dimension of ‘coping and crisis’ into the existing relationships. As this dimension in Figure 2.6 shows, coping and crisis is an important cultural response to perceptions that the prison population is too high. As long as the prison population is perceived as being excessively high, the system itself will inevitably be seen as having to cope and

occasionally having to deal with crisis beyond its control. Managerialism can be seen as a strong facilitating factor in allowing the prison system to cope, both with its own internal inadequacies and external pressures exerted on it from having to deal with ever-increasing prison population and increasing complexity in the nature of offending and the needs of offenders in custody.

Another aspect of managerialist legitimacy has been the way in which measures and standards for prison capacity have been continually flexible over the years. The discussion around ‘normalizing deviance’ is relevant here, particularly the tendency for incrementalist stretching to be rationalizable in complex chains of bureaucratic and managerialist relationships. The ambiguous nature of prison capacity and what constitutes crowding makes it possible for heroic acts of redefinition, re-rationalization, stretching, and flexing, all of which are self-justified largely on the grounds of pragmatism and necessity in order to make the system work. Throughout the 1980s and 1990s, critics have highlighted the resistance in the system to set in place hard-and-fast limits on physical capacity and crowding in British prisons, particularly in light of growing pressure from European regulations on acceptable levels of capacity (Casale, 1994; King and McDermott, 1995). Casale’s series of studies in particular found inadequacies in the strength of *a priori* standards for prison capacity and prisoner conditions, and a tendency for governments to ignore input standards for maximum prison capacities (Casale, 1984 and 1994; Casale and Plotnikoff, 1989 and 1990).

The corollary to this, however, is that managerialism may also be seen as having detrimental effects on the ability of the system to respond to complex problems. Matthews and Young (2003) argue that the increase in the prison population is related to an inherent logic of managerialism, which is target-based government, institutional fragmentation, and the push for cost-efficiency. They point out that ‘part of the shift towards a greater punitiveness in the penal system and elsewhere is a consequence not so much of an inherent desire to get ‘tough’ but a product of attempts to develop and enforce more stringent procedures’ (p228). Indeed, there is a tension here in that the managerialism has tended to accentuate the idea that public policy dilemmas can be tackled instrumentally through better management. Yet, at the same time, excessive managerialism constrains the ability of coordinated response to complex issues such as intervening effectively in the chaotic or dysfunctional lives of offenders. Matthews and

Young coin the term ‘transcarceration’ to capture the way in managerialist systems have the effect of ‘churning’ short-term offenders through the penal system, with the consequence that that system is unable to intervene effectively in the lives of those offenders. This implicates criminal justice processes outside of the prison system also. In Figure 2.4, for example, more than eleven thousand receptions into prison in 2009 were for breach of community orders, in other words, a failure of non-custodial measures to deal effectively with offenders.

Coping can be a very real imperative in the sense that the prison system has to deal with the reality of demands placed upon it. But, actors in public policy systems are also adaptive, and have the ability to behave strategically based on how they perceive their predicament. Coping may therefore be used instrumentally as a strategic option, an excuse, an alibi, a justification, or a way of demonstrating to the outside world how valiantly actors are working to keep the system operational. It is difficult to find hard evidence of this counterfactual dynamic one way or the other. Adaptive actors are likely to be very much aware of the coping and crisis cultures in the system, and hence may be inclined, consciously or sub-consciously, to employ these concepts for their own local gains. In the context of US prisons, Bleich (1989) argues that maintaining a perception of crowding has instrumental value to all actors in the system.

It appears that no-one in the crowding debate has an interest in dispelling the perception of crowding. Legislators on both sides of the aisle see crowding as a way to achieve their political objectives. Administrators view crowding as an opportunity to increase control over prisoners, gain access to scarce resources, and shift blame for problems in correctional institutions. Prisoners and prison reformers value crowding as a means to obtain early release, improve prison conditions, and gain advantage in bargaining with prison administrators (p1174).

This may be an excessively cynical view, and one which perhaps exaggerates the extent to which actors can or may want to behave strategically. It is however a viewpoint which merits attention under conditions of coping and crisis management in a system which, to borrow a term from Hargrove and Glidewell, has a continually weak ‘agency myth’ and relatively low credentials in terms of virtuousness and public standing. Actors in such a system may be inclined to use every available resource or tool to enhance their own standing or credibility.

## 2.4 Imposing value-based goals and resistance in the system

Even if senior ministers and top officials are able to agree on value-based goals for the prison system, and formulate policy programmes based on them, they still have to be able to reform the system so as to realize these goals. We have discussed already the limitations of instrumental intervention and ‘steering’ from above, largely due to the adaptive and strategic capabilities of affected actors, the cumulative effect of which can distort or scupper desired outcomes. As principals attempt to impose value-based change on agents beneath them, these agents may be likely to respond in ways which resist this change – either directly and explicitly, or in more subtle and benign ways. I refer to this as either ‘direct’ or ‘benign’ forms of resistance from within the system. Matthews (1999) writes as much.

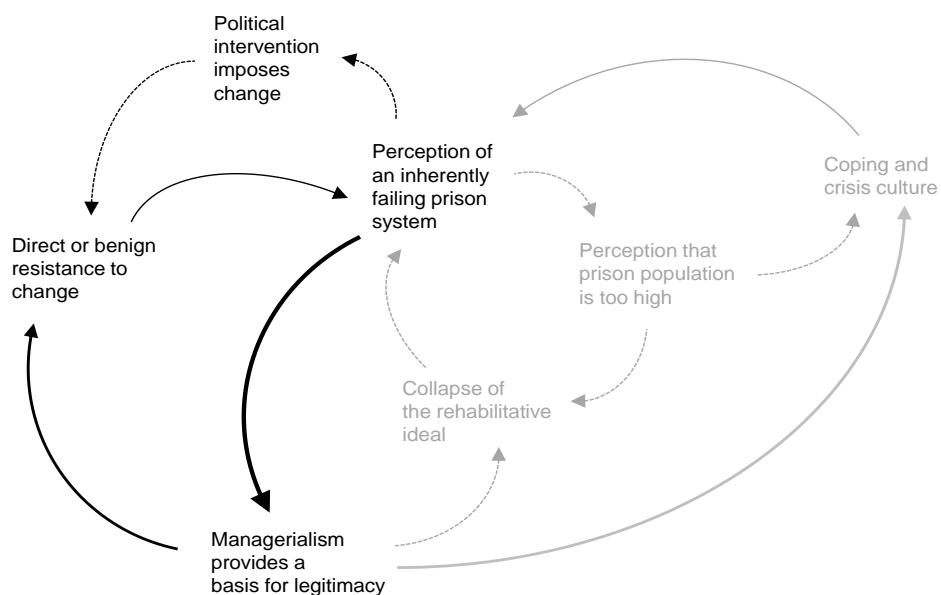
Various agencies involved in the criminal justice system are capable of resisting and even blocking policies with which they do not agree. They have historically demonstrated their capacity to change the direction of policy, although this has not always been in the direction of greater tolerance or leniency. If these factors are not taken into consideration, there is a danger of developing an over-politicised account of social change, and of seeing developments in penal policy as primarily the result of individual decision-making rather than as a social process.(p138)

We can add this new layer to the ever-growing problematique. This involves capturing dynamics in the system which resist, either directly or benignly, the efforts of other actors to impose change. As **Figure 2.7** shows, direct or benign resistance can have debilitating effects, and can feed into perceptions of an inherently failing system. For political leaders and top officials, the inclination may be to keep challenging *status quo* positions in order to reform the way in which the system works, or at least give the impression that they are trying to reform it for the better.

The imposition of managerialist change from above has been one important dynamic in this respect. Continual political intervention by senior ministers is likely to be another. Political elites may seek to impose their own value-based goals on the system, and these are likely to be met with direct or benign resistance by actors within. For experienced officials, political uncertainty and change is a professional hazard of working in a public sector system, and the inclination is therefore to find ways of reducing the costs of this uncertainty. This is likely to involve a balance between doing as much as is necessary to be seen to be responding to change, while at the same time,

keeping in mind that political priorities may change as ministers come and go, or with new environment stimuli, with the result that previous changes become defunct or part of an old order. Agents at all levels in the system cannot help but factor these considerations into the way in which they respond to reformist measures from above.

**Figure 2.7 Adding in the ‘direct or benign resistance’ loop**

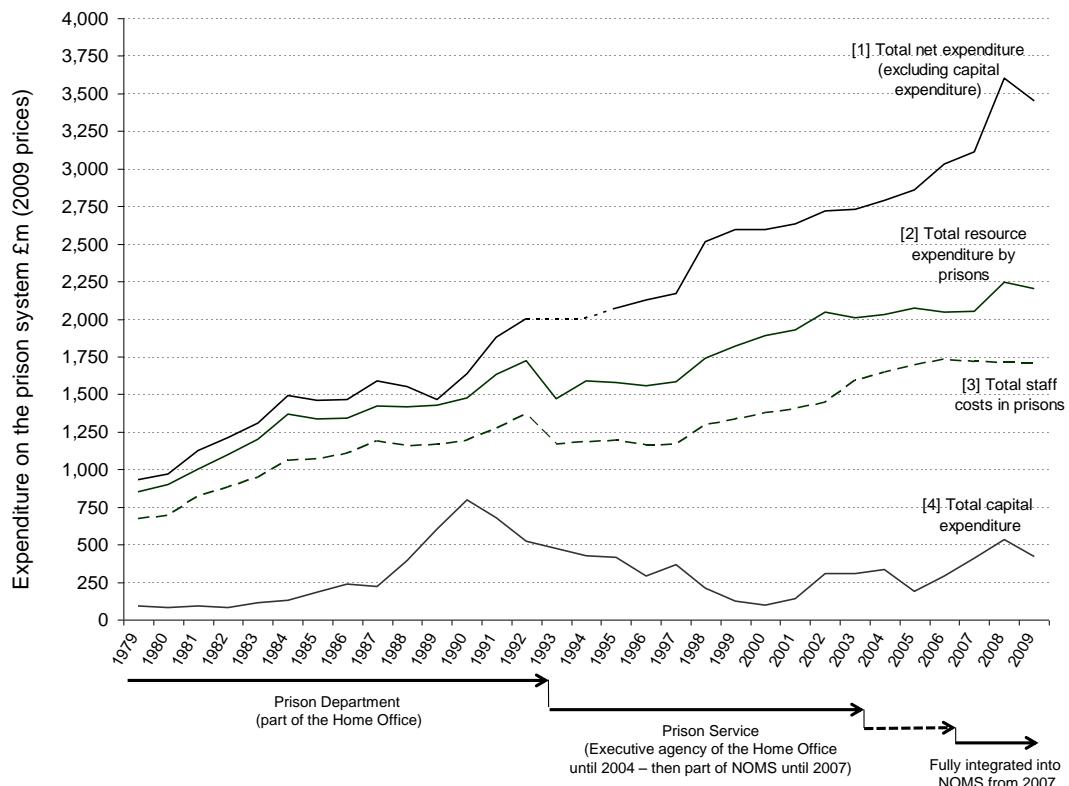


The prison system has been a strong archetype of managerialist change over the decades, incorporating many of the characteristics of NPM discussed in the previous chapter.<sup>32</sup> Amongst the major managerialist reforms has been the creation of the Prison Service as executive agency in 1993 and the situation of management responsibility of the prison system in this agency under its own corporate governance structures, the growth of private sector prison markets from the early 1990s onwards, and the intensification of output and outcome-based performance regimes. **Figure 2.8** below shows the impact of NPM change on the profile of prison expenditure at different levels of the system.

Focusing on the relationship between the top lines in the graph, [1] total expenditure on prisons and [2] expenditure by prison establishments, this provides a proxy for the extent to which centralized control and coordination infrastructure has grown relative to prison establishments. Whereas in 1979, just over 90 per cent of total expenditure on prisons was spent by prison establishments, by 2009 this proportion had dropped to around 64

per cent. This ratio indicates the considerable bolstering of centralized control mechanisms which have been a function of more intensive managerialism over thirty years.

**Figure 2.8: Expenditure at different levels of the prison system, 1979 to 2009**



Source: Prison Department, Prison Service, and NOMS annual reports. See Annex C for summary of different periods mapped below the graph.

Managerialism has elicited many different types of directly or benignly resistant behaviour by actors in the system. Benign resistance is often likely to involve quite complex or nuanced combinations of factors, which aggravate or which put actors in difficult or unsatisfactory situations. As Harding (2001) illustrates, attempts by managers or officials to reform working arrangements or cultures of service can often be met with this kind of benign resistance, and sequential attempts and failures can have quite debilitating effects on a system.

In a closed institutional structure, it is extremely difficult to maintain a culture that stresses programs and prisoner development rather than custody and control. There are myriad reasons for this, all interacting with each other: low recruitment qualifications of officers; inadequate training resources; poor pay; senior

management's poor appreciation of the role of the custodial officer, with consequential indifference or hostility to the workplace situation; thus, the use of union power to change or control conditions in the workplace, and so on. It can, and frequently does, become a downward spiral, with uniformed staff ultimately coming to stand in the way of the official correctional objectives. (Harding, 2001, p329)

The introduction of competition into the provision of prison services is a good example of how attempts to orchestrate value-based change may be directly or benignly resisted. Critics have identified the power of the Prison Officers Association (POA) to resist attempts by ministers and officials to grow competition in the system (Black, 1995; Bennett and Wahidin, 2008). The threat (and execution) of widespread industrial action by the POA has been an obvious sign of direct resistance to imposed change. More subtle resistance to modernization may also come from inside the bureaucracy of the prison system. Senior officials have considerable autonomy to shape the nature of their work, and employ 'dark arts' to resist or delay political projects, which threaten their position or interests. In his account of his time as the first chief executive of the new Prison Service agency, Derek Lewis reflects on the ability of senior prison bureaucrats to 'pursue their own agendas – supposedly hidden but conspicuously obvious' (1997, p41).

Resistance to change may also come from senior ministers who are reluctant to take political risks with innovations or experiment in the system. Political pressures on ministers may come from fear of reactions from press and media, their own party, or the Prime Minister. Again, Lewis (1997) identifies resistance from senior ministers as a source of uncertainty and a constraint over actual operational freedoms. He reports the outcome of a meeting with former Home Secretary Ken Clarke on the political decision to reverse some of the reforms in the 1991 Criminal Justice Act which would have reduced population pressure on the prison system by opting for more liberal approaches to parole and more expansive non-custodial punishment options.

I left the meeting depressed. It had rammed home how little control the Prison Service had over its destiny. A large part of the 1991 Criminal Justice Act carefully crafted by Home Office civil servants to correct major failures in the system was being cast aside on the basis of short term backbench pressure and a few minutes of superficial consideration. (1997, p95)

Response to institutional disaggregation of the penal system as a result of NPM change has also led to the imposition of major re-integrative reforms to the machinery of government of the penal system. Again, the impact of benign resistance to desired change is implicit in much of the literature critical of this imposed reorganization. The creation of NOMS from 2003 is a good example of imposition of value-based goals onto the structures and institutions of the penal system. Through NOMS, officials aimed to reintegrate the administration of prison, probation, and youth justice, and tie this together under the label of offender management and more joined-up approach to tackling the rehabilitative goal and reducing reoffending.

The story of the creation and re-creation of NOMS since 2003 has illustrated a more systematic and formalized approach to strengthening rehabilitative goals in the system and dealing with some of the pathologies of NPM. But as critics have argued, it has also shown what happens when reforms are imposed on systems, and actors are disposed to resist or influence those reforms to their own ends. Early incarnations of NOMS (from 2003 to 2007) were widely regarded by critics and practitioners as ineffective,<sup>33</sup> largely due to the difficulties which the new model had in integrating different cultures of prisons and probation systems. Experts have been vehemently critical of the way in which reform plans were imposed top-down without involvement of key prisons and probation communities. Widespread criticism of organizational dysfunction in the first iteration of NOMS from 2003 provides a good illustration of Moe's argument in the previous chapter about inherently sub-optimal outcomes of structural choice.

## **2.5 How system design keeps pace with the environment**

The fourth potential source of misalignment involves the extent to which the design and operation of the prison system has kept pace with major changes in its external environment. We have seen already in the Brixton vignette how it is possible for a system to be perceived as working at high rates of capacity, yet for it also at the same time to incorporate considerable obsolescence or redundancy. CCS therefore may be sustained by dint of having outdated or badly designed systems which do not reflect wider practices in other modern organizations or arenas. This is an important final aspect in the overall holistic model.

As we have seen in the previous chapter, systems can generate conventions or artefacts that can be seen as symptomatic of deeper cultural dynamics. Say, for example, an organization or system is operating with a chronically out-of-date information management tools, or a set of quality standards which are from a bygone era or do not correspond to the needs of modern environment, then we can regard these features as artefacts of some kind of dysfunction much deeper in the governance of the system. If these artefacts play an important role in the day-to-day running of the system, then it becomes difficult to modernize them. And hence there is a risk that they become institutionalized in the system for long periods of time.

This relationship between system and environment, however, must factor in considerations of how societal norms change relatively over time. For example, as Weiler (1992) points out, the practice of crowding three prisoners in a cell for one throughout the 1940s and 1950s was determined by cultural resistance in government to putting two prisoners in a cell together and risking homosexual activity. As society became more tolerant to homosexuality during the 1960s, and as the need for prison capacity increased, prisoners were doubled in single cells. During the last thirty years, we have seen fundamental changes in the technological, legal, and commercial environment, not least the expansion of computing and digital technology, revolutions in social and technological applications of wireless communication, growth of private sector markets in public services, emergence of human rights cultures and legislation, intensification of complex social problems such as drug addiction, new waves of immigration, and more specifically relating to the prison system, the sudden and sustained increase in the size of the short-term prison population. All of these environment changes have posed major challenges for the ability of the prison system to adapt and continually modernize.

As discussed in the previous chapter, bureaucratic cultures by nature may be prone to internalizing and bureaucratizing responses to environmental complexity, while the world outside changes. A series of reports by the UK National Audit Office showed how the Treasury was caught unawares by the first major refinancing of a private sector prison by Group 4, and over subsequent years, developed an elaborate set of rules and conditions to ensure that it received a fair share of financial dividends from future refinancing deals (NAO, 2000 and 2006). In the meantime, however, interest rates of

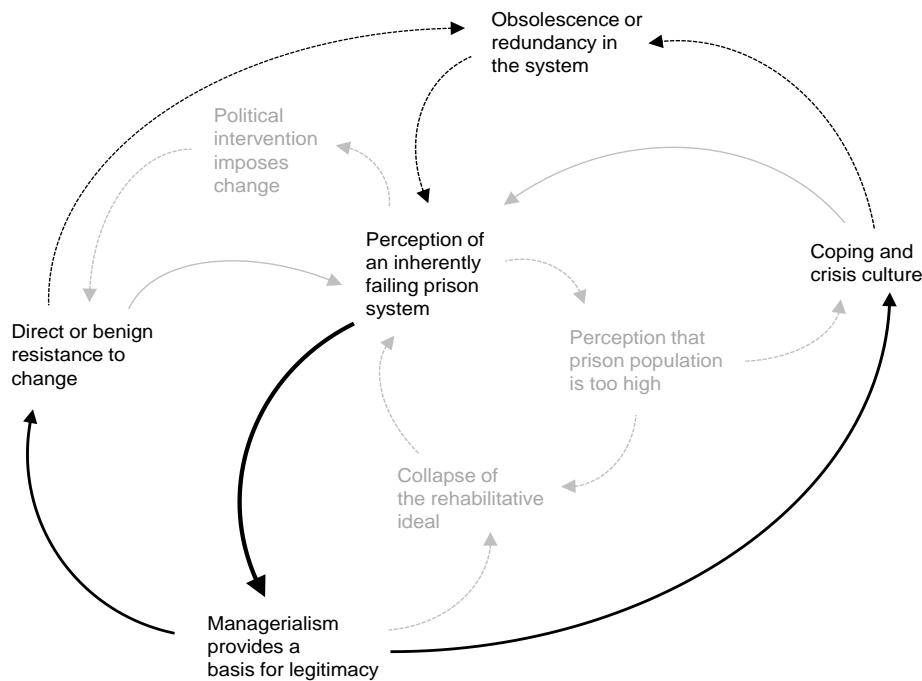
private finance reduced considerably as the private market developed and risk reduced, meaning that there was less scope for very large refinancing gains. Also, secondary markets in equity for public sector contracts grew, thus changing the nature of the risk for government anyway. In short, Treasury had responded with a new set of rules to a problem which, broadly speaking, had changed fundamentally in nature by the time the response came.

It is likely that lags in keeping up with more complex and deep-seated features of modern society will build up gradually over long periods of time. Waves of social and cultural change may be hard for large public sector systems to integrate into the way they operate. Hence, new pressures can accrete slowly while systems continue to operate in standardized ways. Often it will take cases of large upheaval of disturbance (*i.e.* crisis) to shake the system into modernizing. One former top prison official reflected on how fundamental changes in UK society throughout the 1980s under Conservative governments underlay a period of severe disturbances in the prison system throughout the late 1980s and early 1990s.

I think those changes in society, changes in background, people, what was happening in society, changes in our view about revolutionary activity, all played into prisons and expectations about what prisoners were entitled to. And prisons weren't changing very much. Still dishing out much of what they had in the late 1960s. We continued to dish out the same things, which had worked with a post-war generation, rationing, overcrowded bedrooms, military discipline, and a fair amount of brutality at home. <sup>[#2]</sup>

We add this final layer to the problematique in **Figure 2.9**. Here two potential factors feed into obsolescence or redundancy. First, 'coping and crisis' cultures may sustain perceptions that there is neither time nor opportunity to modernize the system or think strategically about the long term. In not investing intellectual or financial resources into continual modernization of systems and processes, there is a danger that public

**Figure 2.9 Adding in the ‘sustained obsolescence and inefficiency’ loop**



sector organizations develop and, to a large extent, normalize obsolescence in the way they operate. Sustained reliance on obsolescent processes can come with strong feedback effects and constructed rationalization about the difficulties of changing things and the benefits inherent in maintaining these obsolescent ways. Obsolescence in the physical infrastructure of the estate may be caused by the need for continual short-term coping. For example, during times of prison population increase throughout the late 1990s, capital was made available for procurement of ‘emergency’ accommodation (NAO, 2005). Although this provided value for money in the short term, it also led to another variation of sustained obsolescence in the physical estate as these short-term units became an indispensable part of the long-term supply of accommodation.

Direct or benign resistance by actors in the system may also lead to lags in the ability of the system to keep up to date with major changes in environment. Actors in the system may be able to resist modernization, which in turn may be likely to have considerable impact on the way in which available capacity in the system is deployed. As discussed, resistance may not necessarily be direct, such as a staff union threatening industrial action. It may also be benign and systemic, not attributable to any one

particular actor, and largely invisible to the human eye. It may also be the product of a combination of many different types of nuanced strategic or adaptive behaviour by actors in the system. As the *problematique* suggests, whether obsolescence and redundancy in the system is caused by the imperatives of coping, or by different forms of resistant behaviour, the response to it is likely to be more managerialism.

I return to the many aspects of obsolescence and redundancy in subsequent chapters. It is a key part of the overall system approach, as it is both an artefact of deep-seated dysfunction in governance arrangements in the system, and a cause of further dysfunction. In the final section, I discuss where we have got to with the development of this visual *problematique* and its four inter-related loops.

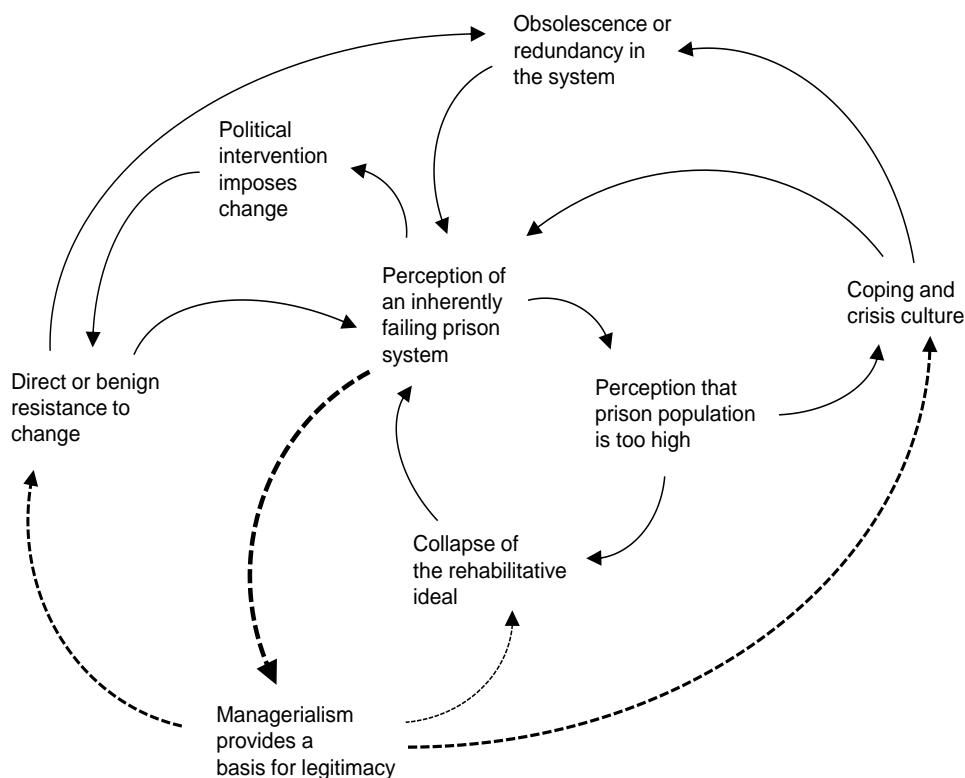
## **2.6 Integrating the four loops into one – the ‘problematique’**

In this *problematique*, I have set out a more holistic governance-style framework for organizing and understanding how different theoretical perspectives discussed in the first chapter might fit together to explain CCS in the prison system. As the incrementally layered and integrated *problematique* has illustrated, some factors can play different types of roles in different loops (even though they are part of the same). Indeed, some factors appear in more than one loop and are therefore important nodal factors for thinking how each of the loops fit together in one whole system view. **Figure 2.10** summarizes this hypothetical *problematique*. It is an attempt to look at the various aspects of CCS in the round, and integrate existing and authoritative literature on the subject.

Looking at crowding over thirty years raises questions around how we reconcile universal and specific dynamics. Thirty years is a long time for any public policy system, and explanations must be flexible enough to incorporate universal and specific. One important specific change been the development of managerialism. It has played a dual role as dependent and independent variable in the system. Clearly, crowding existed in prisons prior to the emergence and development of ‘managerialism’, and in this sense, managerialism must be seen as an independent variable of change which has impacted on the system. At the same time, managerialism has been perhaps the dominant paradigm through which the system has evolved, and therefore must also be seen as a dependent variable upon which environment factors impact. I have therefore drawn the

problematique so that it is internally coherent with or without the managerialism factor (*i.e.* ‘managerialism provides a basis for legitimacy’ and its appended arrows (dotted lines) could be removed from the problematique, and the system would still be internally coherent).

**Figure 2.10 The problematique**



Through this diagrammatic depiction, we can begin to conceptualize how prison crowding can be seen as an example of CCS, and furthermore, how CCS can be seen an outcome of prevailing states of equilibrium in a public policy system. In the problematique above, we see signs of aggravating and compensating dynamics, which interact and are constituent in these states of equilibrium over time. Prison crowding can therefore be conceptualized as a function of governance equilibrium, and the particular aggravating and compensating dynamics which sustains this equilibrium. It provides a basis for beginning to explain how a system can function at continually high levels of capacity, yet at the same time, incorporate strikingly high levels of obsolescence, redundancy, and inefficiency. It also provides a basis for understanding how a prison

system, and indeed any other large public sector system, can appear to neither completely excel nor completely fail in the things it does.

The *problematique* does not at this stage tell us much about the relative influence of different factors within the *problematique*. Small changes in one factor may lead to disproportionately large changes across others. Similarly, large changes in one factor may not necessarily guarantee similar change across others. This is where understanding ‘system effects’ becomes important. For example, the ‘collapse of the rehabilitative ideal’ may seem relatively small in the overall *problematique*, but small improvements in this factor may well lead to disproportionately larger effects across the system. A committed or charismatic minister, for example, may be able to trigger system-wide change simply on the basis of a change of tone in her public statements about the rehabilitative goals of prison. But success will rely on other factors in the schema working to support this outcome. Let us say that this minister begins to ‘talk positively’ about the rehabilitative role of prison. This may have a positive effect to reduce perceptions of a failing system, and if the minister is serious, she may be likely to intervene politically to impose change on the system. Political intervention may also be ‘managerialized’ in the form of output or outcome targets or other managerialist mechanisms.

As we have discussed, however, this kind of top-down attempt at policy engineering is no guarantee that rehabilitative outcomes in prisons will actually improve. Direct or benign resistance to efforts at rehabilitative change may be triggered if these political and managerialist interventions are not steered or handled ‘successfully’. If they are not, these attempts run the risk of unravelling, as resistance feeds back into perceptions of failure, and if perceptions of failure reach criticality, this may likely persuade this senior minister (assuming she is still in office) that there are more winnable or worthwhile battles to be fought elsewhere. Hence, the chronic condition is likely to remain chronic.

Rather than being the solution to the problem, this *problematique* provides a hypothetical device with which to structure our thinking about the dynamics of CCS, and on which to base the empirical work in subsequent chapters. In digging further into the empirical aspects of CCS in prisons, it will become clearer how the three theoretical explanations ‘fit into place’ in the holistic explanation of the overall condition. With this

framework in mind, therefore, we move to the empirical and methodological plan of attack. This has needed to be encompassing enough to support this kind of ‘whole system’ approach. As Minkin (1997) suggests, political research of this kind is as much a ‘creative art’ as it is an exercise in scientific analysis. In characterizing the role of the social science researcher as simultaneously one of ‘detective’, ‘juggler’, and ‘patternmaker’, these combined roles imply a kind of dynamic mix of inductive and deductive styles of reasoning (p192).

The methods for this research have therefore had to be mixed and flexible in their design and application. Extensive description of these methods can be found in Appendix A. It is important at this point that I received official approval for this research from NOMS in June 2009, and this undoubtedly transformed the level of access and insight which I was allowed. In summary, I have based the empirical work on the following measures.

- 120 in-depth interviews with former senior ministers, top officials, prison governors, staff groups, private sector officials, senior probation officials, senior judiciary, and third sector officials;
- Focus groups with deputy governors, prison officers, and private sector executives and prison directors;
- Site visits to 29 prisons of different types and locations, including walk rounds with senior governors;
- Work shadowing in Brixton prison and in Prison Service headquarters;
- Extensive collection of 30-year time series data from public sources on performance and capacity in the prison system.

Most of the 120 interviews conducted for this research were structured to capture key analytical themes, and to do so in such a way as to probe the evolution and development of these key public policy and management themes longitudinally over time. The majority of interviews have been with individuals who have had many years experience in or of the prison system in England and Wales, and therefore they have been able to calibrate their comments and views in terms of these broader change. The way in which individuals rationalize change or improvement in the prison system over a long period itself presents interesting methodological questions about how to control for perceptions of relative and absolute levels of performance.

Although the *problematique* above helps to organize many of the key factors in this research, it is still somewhat vague in terms of how actual individual actors make decisions and take actions in a real live working prison system. In short, agency still needs to be ‘injected’ into the picture. Chapters 5 to 8 therefore look at the chronic condition of capacity stress in the prison system from four specific and different actor perspectives – senior ministers (Chapter 5), top officials (Chapter 6), prison governors and staff (Chapter 7), and private sector firms (Chapter 8). In these chapters I examine in more detail the concept and challenges of ‘constrained autonomy’ for these different groups of actors, and identify how the predicaments they face in a situation of constrained autonomy contributes to sustaining CCS. As the previous chapter has made clear, in order to understand characteristics of the whole system, it is necessary to atomize the approach as much as possible, and dig down to the impacts of real-life actors in real-life situations.

Before doing this, however, I turn to two key dimensions of the *problematique*, both of which look at different aspects of managerialism and the particular type of legitimacy it brings. Chapter 3 looks at how managerialism has provided a basis for legitimacy through improved performance. Chapter 4 examines the dynamics of definitions and standards for capacity.

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<sup>21</sup> Easton, 1967, p474

<sup>22</sup> Phillips (1976) points out various problems: ambiguity around what is meant by the ‘system’; vagueness over what is to be included with system ‘theory’; failure of systems theory as scientific method; and the failure of system theorists to operationalize their theories without use of inherently reductionist analysis (p47). Phillips references Easton’s work to illustrate inevitability in having to find a way to demarcate in some kind of practical boundaries of the system. He quotes Easton as follows, ‘Even though typically we must chop off a segment of reality for specific research, it is always with the knowledge that somehow we are violating reality. For empirical purposes, this is unavoidable and does little damage as long as we are sharply aware of what we are about’ (1976, p78).

<sup>23</sup> Carley (1980) outlines three aspects which map closely. He points out that policy analysts must understand ‘value conflict resolution’ and the allocation of resources into ‘who gets what’. Second, they must understand the dynamics of ‘bureaucratic maintenance’, *i.e.* standardization of procedures, coordination, and implementation, which makes up the public policy system. Thirdly, policy analysts must employ ‘analytic rationality’ to aid decision making and to understand impacts of policies on their environment (p22).

<sup>24</sup> For an in-depth account of the concepts of complexity theory, and their general application to social science, see Kauffman (1995). For application of complexity theory to management science and organizational theory, see Stacey (1995). Complexity theory becomes more prevalent in UK management journals throughout the 2000s, for example, Houchin (2005). In more recent years, public administration theorists have began to apply the concepts of complexity theory to public policy issues. See, for example, Van Buuren and Gerrits (2008); Teisman and Klijn (2008); Teisman et al., (2009).

<sup>25</sup> Kauffman (1995) puts this idea somewhat poetically as follows. ‘In such a poised world, we must give up the pretense of long-term prediction. We cannot know the true consequences of our own best actions. All we players can

do is be locally wise, not globally wise. All we can do, all anyone can do, is hitch up our pants, put on our galoshes, and get on with it best we can' (p29).

<sup>26</sup> Ruggles-Brise (1921) characterizes the difficulties of reconciling goals of deterrence and reform in the system, and the tensions between these goals which lasted well into the twentieth century. See Fox (1952) for a comprehensive account of the 'separate system' and how the practicalities of change towards a more centralized prison bureaucracy from 1870s underpinned a gradual move away from the strict separate confinement and hard labour. Fox discusses how the system itself clung to the shadow of hard labour and separate confinement even though the realities of the system were changing into the twentieth century (p59). McConville (1981) points out that even though the separate system was maintained well into the late nineteenth century, reformative principles were considered secondary to deterrence. He describes 'an almost total collapse' of the reformatory principle after 1850 in fact.

<sup>27</sup> A senior member of the Prisons Board at the time, Dunbar (1985) also wrote in a much-cited report that 'a sense of futility has become pervasive and has led to what some observers have called a moral vacuum' (p6).

<sup>28</sup> A sense of perpetual failure or crisis in the prison system is closely linked to the perception that governments and courts send too many people to prison. For versions of this demand-side argument, see Bottoms, 1980; King et al., 1980; Fitzgerald and Sim, 1982; Stern, 1993; Coyle, 1994 and 2007; Dunbar and Langdon, 1998; Garland, 2001; Newell, 2003; Wilson, 2003; Hedderman, 2005 and 2008; Faulkner, 2006; Blom-Cooper, 2008; Loader, 2007, 2008, and 2009. Demand-side explanations for prison capacity stress also tend to imply moratoria on prison building, or other engineered constriction of supply-side factors. For discussions over the years, see Blumstein and Cohen, 1973; Howard League, 1974, 1981, 1996, 2005; Downes, 1980; Blumstein et al., 1983; Funke, 1985; Blumstein, 1988; Matthieson, 1991; D'Alessio and Stolzenburg, 1997; Coyle, 2004; Garside, 2005; Heddermann, 2008.

<sup>29</sup> Although the vast majority of literature on the prison system argues that prison populations are excessively high, a small number of authors have argued the opposite, and characterize these demand-side interpretations as part of a misguided liberal consensus and instrumental use of it. Fraser (2006) points out that demand-side arguments 'appear to wield considerable influence on our criminal justice policies because their anti-prison philosophy fits in with the government's own objectives, and Home Office and Treasury civil servants are happy on occasions to let them do the talking for them' (p71).

<sup>30</sup> Around one third of 'Other' offences in 2009 were for breach of court orders (11,470 breaches in total). Others include: criminal damage, affray, threats and disorderly behavior.

<sup>31</sup> See for discussion, Evans, 1980; King et al., 1980; Downes, 1988; Mylotte, 1989; King and McDermott, 1989 and 1995; and Casale, 1994.

<sup>32</sup> See for discussion, King and McDermott, 1995; Talbot, 1996 and 2004; Cavadino and Dignan, 2003 and 2006; Matthews and Young, 2003; Pollitt et al., 2004a and 2004b; Boin et al., 2006; and Lacey, 2008.

<sup>33</sup> See for discussion, Faulkner, 2004, 2005 and 2006; Gough, 2004; Padfield, 2004; Hedderman, 2005; Rungay, 2005; and Cavadino and Dignan, 2006.

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## *Chapter 3*

### **Performance improvement and managerialism as a basis for legitimacy**

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*I've been round lots of prisons, and I've never once thought this prison is running at the very edge. You could clearly make them much more efficient.<sup>34</sup>*

*Historically, we have been given these efficiency savings while we are sat round a table, and actually they've been realistic and we've been able to deliver. The ones we are asked to do now. There is a general sense that they are not realistic without serious damage to services and establishments.<sup>35</sup>*

Managerialism as a basis for legitimacy forms an integral part of the *problematique*. It has shaped the development in the prison system during the last thirty years, and appears to operate in quite complex and countervailing ways. In this chapter I examine the role of managerialism in more detail, and show how it has had important aggravating and compensating effects vis-à-vis chronic capacity stress (CCS). In this sense, the chapter contributes to discussions on paradoxical or countervailing dynamics inherent in managerialism (Maor, 1999; Hood, 2000; Hood and Peters, 2004). As I will show, managerialism has delivered improvements in the prison system, and has had alleviating impact on CCS. It has encouraged a much more ordered and disciplined system, and has allowed it to cope with increases in pressure. But as I will also show, managerialism has also shaped the system in such a way that it has fed into and helped to sustain CCS.

As the *problematique* has shown, aggravating and compensating dynamics co-exist as part of the chronic condition. The Brixton vignette illustrated how a public policy system can incorporate apparently countervailing states, on the one hand, operating at close-to-tolerance levels, yet at same time, incorporating striking systemic obsolescence and inefficiency. It is therefore difficult to know to what extent capacity

stress is a problem of latent capacity not being effectively used, and to what extent it is just a straightforward consequence of sustained under-supply. There are clearly signs that the system is being pushed and squeezed. Yet, signs of sustained obsolescence or inefficiency also suggest that stress is a function of the way in which the system itself is operating and the inherent equilibrium within.

The analysis in this chapter therefore seeks to show these countervailing effects. As a way of beginning to assess performance, I use ‘quality-adjusted productivity’ as a proxy for performance over thirty years. The rate of increase in prisoners processed through the system each year has been more than matched by the rate of increase in expenditure on the system, and as a result, basic productivity can be shown to be flat over three decades. However, once we adjust productivity for some key aspects of performance improvement over the years, we find that managerialism can be shown to have delivered important improvements. In this sense, managerialism has provided a basis for legitimacy. In the second half of the chapter, however, I show that this managerialist change has also fed into many of the aggravating aspects highlighted in the *problematique*, and as a result, done much to sustain the basic condition.

### 3.1 Productivity analysis as a proxy for performance

So far we have been talking about the concept of CCS in prisons without really defining what we mean by it. In basic terms, it describes a sustained or long-term equilibrium, as depicted in the equation below, but one which incorporates a situation of stress in which the supply of prison capacity is perceived to be less than the demand.

$$[\sum_{1 \dots t} [r(Nl)]] = [\sum_{1 \dots t} [s(Pi)] + k]$$

Starting with the demand side (on the left of the equation), this is determined by the product of three factors: the quantity of prisoners received into the system either under sentence from the courts or on remand  $[N]$ ; the average length of stay of those prisoners in custody as a proportion of one year  $[l]$ ; and the range of infrastructure and programmes requirements  $[r]$ , which different types of prisoners ( $1 \dots t$ ) may have. Each type of prisoner will require particular levels of security, specific types of programmes and treatments, special needs, and so on. In simple terms, the total demand for prison

capacity is determined by the product of  $[r(Nl)]$  for different types of prisoner ( $1\dots t$ ) where  $[l]$  and  $[r]$  are adjustor values.

Supply of prison capacity is determined by the product of three factors: the number of prisoner bed places available for use  $[P]$ ; sufficient infrastructure and programme resources  $[i]$  in the prison to match aspirations attached to each type of prisoner; and sufficient staffing levels  $[s]$  to oversee prisoners in their day to day activities. The relationship here is determined by the sum of  $[s(Pi)]$  for different types of prisoner  $1\dots t$ . As with demand above ( $s$ ) and ( $i$ ) are adjustor values, which in theory both vary around 1, whereby values less than one adjust the effective capacity downwards (*i.e.* denote undersupply) and value greater than one adjust effective capacity upwards (*i.e.* denote oversupply). We also factor in an acceptable level of operational slack or headroom in the system as a constant  $[k]$ , which would always need to be there in order to make the system workable. The value of this constant is open to question, as the optimal level of slack required will vary according to the goals of the system itself.

For the prison system to remain operational and stable, there needs to be some kind of manageable and acceptable equilibrium between supply and demand. The equation above may denote a situation in which supply is chronically less than demand, however, it is also the case that equilibrium between the two must be sustained in one way or another. It is here that aggravating and compensating dynamics come into play. In order for a situation of undersupply or overload to persist, compensating or coping effects must be present in the system to offset the aggravating or stressing effects. For example, it may be possible to compensate for inadequacies in the infrastructure of a prison by deploying more staff. In this way, the volume and deployment of staff can positively offset situations in which the infrastructure multiplier  $i < 1$ . In the capacity equation above, ( $s$ ) is a multiplier reflecting staffing levels, which has a value greater than zero and which has an adjustment effect on ( $Pi$ ). It may be that a prison is operating at an equilibrium level where  $Pi < P$  (*i.e.* infrastructure is inadequate for the number of prisoners), but if the multiplier ( $s$ )  $> (i)$ , this will have a positive compensating effect on overall capacity and mean that  $Pi \geq P$ .

The ability of staff to be reflexive, and respond positively or negatively to different incentives and motivations, and different environments and cultures, gives the system considerable latent capacity. This makes it difficult to say what is the optimal

number of staff needed to run a prison. Indeed, degrees of constructed over-supply of staff seems like a reasonable thing to do in prisons, from the point of view of providing extra assurance in what can be volatile or unpredictable environments. Undersupplying staff may however encourage those on duty to be more proactive, more aware, and generally work harder to manage their situation. Also, it is often the case that labour intensive systems perpetuate their own labour intensity, stabilize at inefficient equilibrium levels which are then normalized (and defended as ‘normal’) by those working in the system.

Let us therefore examine some basic trends over time in demand for and supply of prison capacity. Productivity analysis provides a way of evaluating performance of public sector organizations over long periods (Carrera and Dunleavy, 2012). For public sector systems which process or deal with ‘throughput’ of units, it can provide a useful way of cutting through the ‘fog’ of politics, and establishing a fundamental baseline proxy for performance.<sup>36</sup> A good starting point is ‘total factor productivity’, calculated by the ratio of total outputs to total inputs. For prisons, total outputs can be estimated by the average annual size of the prison population cost-weighted to take into account variations in cost of accommodating different types of prisoners. Inputs are calculated by deflated current expenditure on prisons at 2009 prices.<sup>37</sup>

**Figure 3.1** shows a first assessment of total factor productivity across thirty years. Cost-weighted outputs have nearly doubled (from around 70 to 135), while net expenditure on the prison system as a whole has increased by a factor of almost four (from around 40 to 160). As a ratio of outputs divided by inputs, total factor productivity decreases quite strongly up to the early 1990s and then flattens out at somewhere the baseline level. Despite a doubling in the prison population, we have seen even greater increase in the rate of expenditure on the system. The steady decline in productivity throughout the 1980s and early 1990s can be explained by the considerable sums of new investment into the system which came from 1979 onwards, largely to compensate for chronic under-investment throughout the 1960s and 1970s.<sup>38</sup>

**Figure 3.1: Total factor productivity in the prison system, 1979 to 2009**



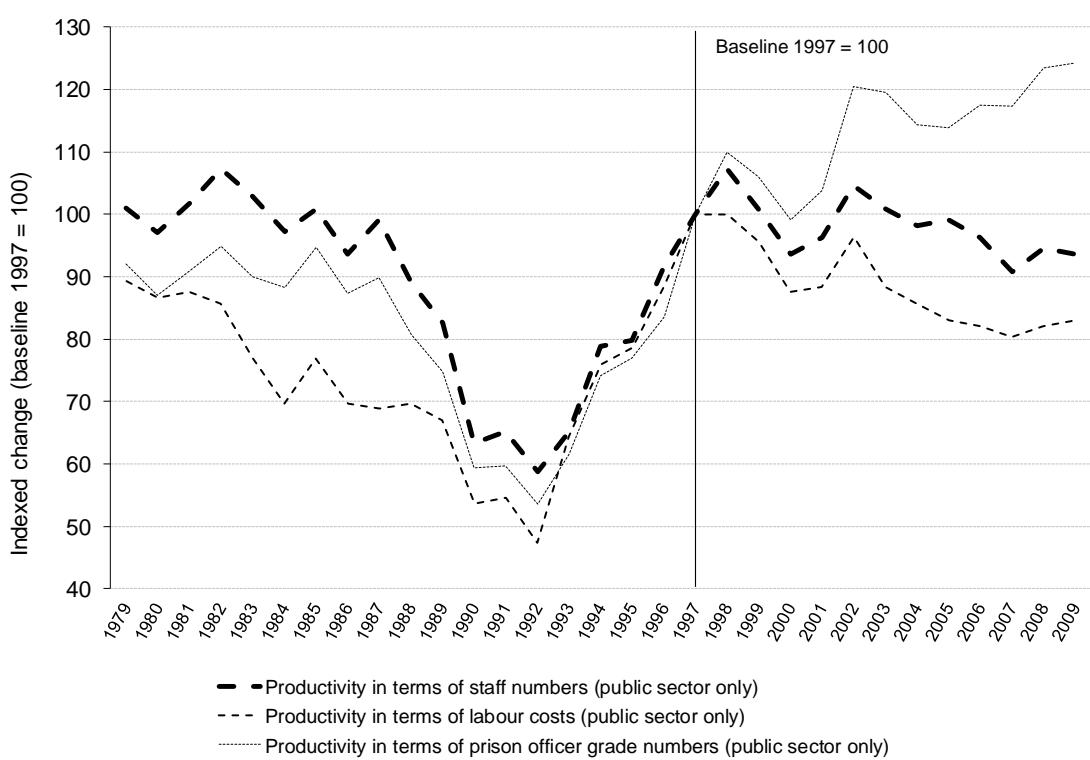
**Source:** Prison Department, Prison Service and NOMS annual reports, 1979 to 2009. See Methods Annex A3 for further details.

On the demand side as well, the marginal reduction in the size of the prison population from the late 1980s to the early 1990s also led to downward trend in productivity. As we have seen in Figure 2.3, the rapid increase in the short-term prison population had the effect of reversing this steady decline in productivity from 1993 onwards. Indeed, productivity increase from this point reflects the system having to cope with much greater demand with little commensurate increase in supply of resources. With the new Labour government in 1997 came another injection of resources into system, particularly focusing on prison regimes, drug treatment, offender behaviour programmes, and prisoner education. Throughout the 2000s, rate of expenditure on the system climbed at roughly the same rate as cost-weighted outputs, sustaining relatively flat productivity.

Trends in labour productivity show broadly similar trajectories. Outputs here are the same as above, annual average prison population, but only including public sector prisons. Instead of using total current expenditure as proxy for inputs, I use total full-time equivalent staff numbers.<sup>39</sup> Again, these data only cover public sector prisons, as

staff data on private sector prisons (approximately 11 per cent of the market in 2009) is not publicly available. For labour inputs, I have used two separate measures, the total average number of staff employed in the prison system (including headquarters, regional and all prison staff), and the total amount of expenditure on staff in the public sector system (deflated at 2009 prices). **Figure 3.2** below shows the three productivity tracks for public sector prisons only.

**Figure 3.2: Trends in labour productivity in the prison system, 1979 to 2009**<sup>40</sup>



**Source:** Prison Department, Prison Service and NOMS annual reports, 1979 to 2009. Hansard archive of parliamentary written answers. See Methods Annex A3 for further details.

Looking first at labour productivity for all prison system staff (thick broken line), there is an initial increase above the baseline level, explained by a 16 per cent rise in the number of prisoner receptions and an increase in the average prison population of around 2,000. Staff numbers increased by about 7 per cent, hence this positive jump of labour productivity. From 1987, however, there is a rapid drop in labour productivity from around 100 to 60, the combined effect of a reduction in the size of the prison population and an increase in the number of staff employed. This can be explained partly

by the introduction of the 1987 ‘Fresh Start’ reforms, which effectively ‘bought out’ the practice of prison officer overtime and replaced it with a 38-hour working week. As a result, increased numbers of staff were employed in order to compensate for overtime that had been worked by prison officers up to that point.

Interviews and literature confirmed the prevalence and power of this overtime culture.<sup>41</sup> Governors frequently reflected on the ‘bad old days’ of overtime and associated practices. One governor explained a typical strategy on court escort duty in the early 1980s.

You would go out for the day, prolong the day as long as possible, so you get over 5, 10, or 12 hours. Often the courts would finish, and principal officers would sit on the coach, the shutters of the vehicle were shut. And you would sit and sit and wait for the time to pass. Prisoners handcuffed. Then *[he pauses]* OK driver, thank you. Shutters would go up, and the driver could drive out because you had gone over the 10 or 12 hours threshold.<sup>[#4]</sup>

The effect of overtime on productivity is shown by looking at labour productivity in terms of staff costs (thin broken line). This trend shows a much steeper decline in the first half of the 1980s, a leveling out during the second half of the decade, and then a convergence with the staff numbers trend into the early 1990s. The effect of overtime payments (*i.e.* paying more to relatively fewer staff) is likely to explain how productivity in terms of staff costs can be much lower than productivity in terms of staff numbers. Under overtime arrangements, the incentive for the POA was to keep actual staff numbers artificially low so that existing staff could maximize their gains from available overtime. This changed when overtime disappeared. As one former senior official explained:

Say you need 100 prison officers to run a prison. Prior to Fresh Start, POA would not go for 100; they would go for 80, so that everybody got overtime. When they went onto salaries in 1987, they switched their argument to ‘we need these 100 people...and, by the way, we need another five’.<sup>[#5]</sup>

From 1993 onwards, the productivity tracks show a radical change in a positive direction, and this can be explained by the rapid increase in the prison population. All three productivity tracks increase from mid-60s and low-70s back up towards the baseline level of 100. From 1997 onwards, there is an interesting divergence in the

relationship between labour productivity in terms of *all prison staff* and *prison officer grades only* (thin solid line). Throughout the 1980s these two tracks follow almost exactly the same trajectory, however the lines diverge quite significantly from the early 2000s. This divergence can be explained by two separate yet related factors. First, the number of headquarters and regional staff increased rapidly from the mid-1990s as the Prison Service grew as an executive agency and subsequently into NOMS. Hence, the number of prison officer grades reduced comparative to other staff in the system. Second, the cost of prison officer grades has always been relatively expensive, once pensions and other benefits have been factored in, and over the years, the Prison Service has sought to reduce these costs by introducing alternative lower-level grades into the system to take on much of the work done by officer grades.

This brief analysis suggests that throughout the 1980s, there was considerable latent capacity and inefficiency in the system. The abolition of overtime had a downward impact on productivity in the sense that it increased the overall cost of staff in return for greater control and standardization over staffing arrangements across the Service. Since the mid-1990s, latent staff capacity has gradually been more efficiently deployed and costs have been taken out of the system by gradual streamlining of prison officer grades, removal of layers of middle management, and introduction of non-graded, relatively cheaper prison staff. Nevertheless, as later sections will show, even as recently as the late 2000s there are still signs that there is latent staff capacity in the system.

### 3.2 Adjusting productivity to account for performance

The analysis so far has shown that despite a doubling in the prison population over thirty years, total factor productivity has been on a downward flat trend. This, however, is a narrow interpretation as it overlooks an almost universal view amongst interviewees that the system has improved many basic aspects of its performance during this timeframe. As one former senior prison official put it, ‘the Prison Service I joined was an idle shambles, but it has improved enormously. It has got better every year. It is infinitely better managed than it was. People who say differently are just talking nonsense’.<sup>[#6]</sup> Another senior NOMS official echoed this widely held view.

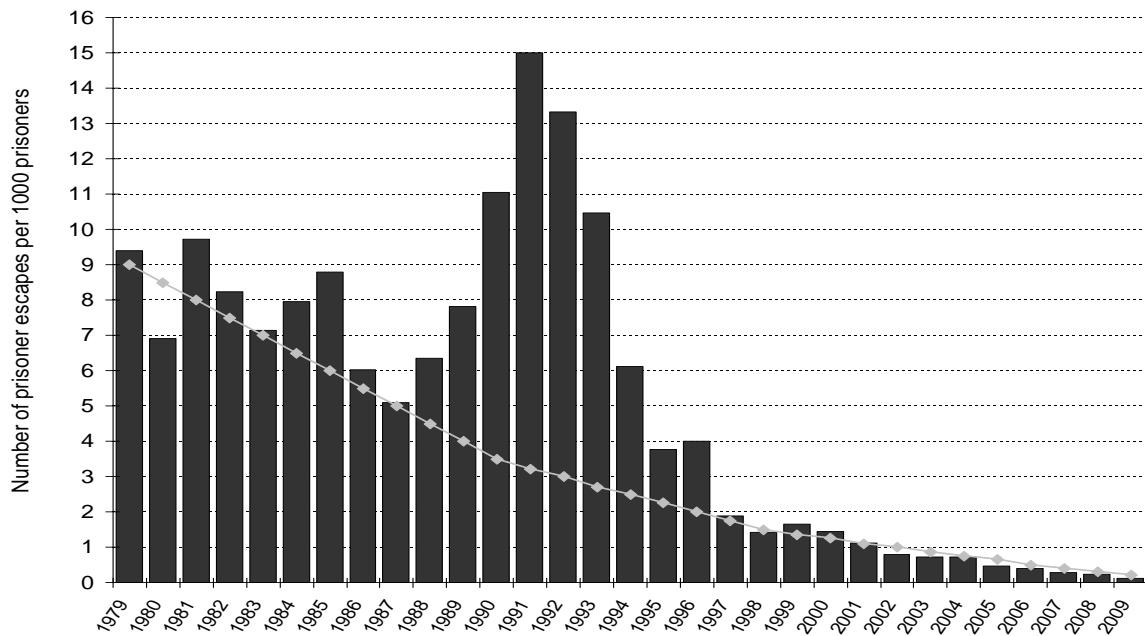
When I think back to 1983, conditions for staff are better, conditions for prisoners are better, and shock horror, managerialism has given some improvements. I can

remember joining a Service where prisoners were treated with indifference; where public money was spent running prisons for the benefit of the staff, where ‘reducing reoffending’ was a word only; the concept of public protection was a fence and a wall; prisoners families didn’t come into the equation; and as an organization, I think we were third rate. <sup>[#7]</sup>

In key areas of performance, particularly security, decency and order, and general management of the system, it is possible to identify signs of major improvement. As one former top official put it, ‘I don’t think, prior to Strangeways, that anybody at the national level of the prison system thought about order. They thought about how to respond when we’d lost order. They occasionally thought about deterrents. But they didn’t think about how we could keep the place ordered. That became increasingly part of how we did business’. <sup>[#8]</sup>

Since the mid-1990s, and the high profile escapes of prisoners from high security prisons Whitemoor (September 1994) and Parkhurst (January 1995) respectively, prison security has been a major area of priority and focus for ministers and top officials. This increased focus on security has been widely acknowledged by many interviewees and academics.<sup>42</sup> It is also supported by data on numbers of escapes in the system over thirty years (see **Figure 3.3**). The distribution is punctuated by a period of increase in escapes from the start of the 1990s, and as other indicators suggest, this reflects a period of upheaval and crisis in the system during those years. Without this punctuated increase, we discern a relatively continual decrease in escapes (sketched roughly by the grey line).

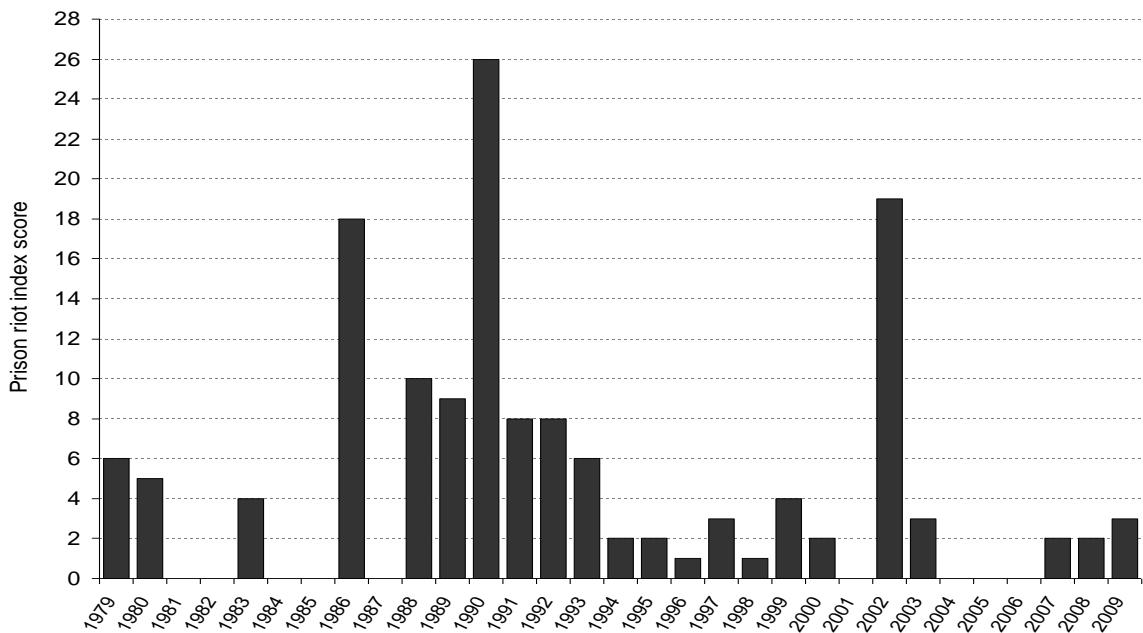
**Figure 3.3: Average annual number of prisoner escapes, per 1000 prisoners**



**Source:** Hansard electronic archive of written parliamentary answers and Prison Service annual reports

Analysis of major riots and disturbances suggests a more erratic picture of gradual improvements punctuated with bouts of unrest and violence. This is in-keeping with inherently non-linear characteristics of causes behind prison riots (Boin and Rattray, 2004). The index of riots and disturbances in **Figure 3.4** below reflects similar upheaval during the late 1980s and early 1990s, consisting of the series of disturbances leading up to the major and system-changing riots at Strangeways prison during a week in April 1990. Apart from a bad year in 2002,<sup>43</sup> on average the system has seen less major incidents since the mid-1990s, confirming perceptions of a more ordered prison system. Data on the level of assaults in prison has however increased since the mid-1990s, but this is susceptible to ambiguities over the years in defining and counting assaults, and as much as reflection of the system having better and ‘truer’ measures in place for recording incidents of assault.<sup>44</sup>

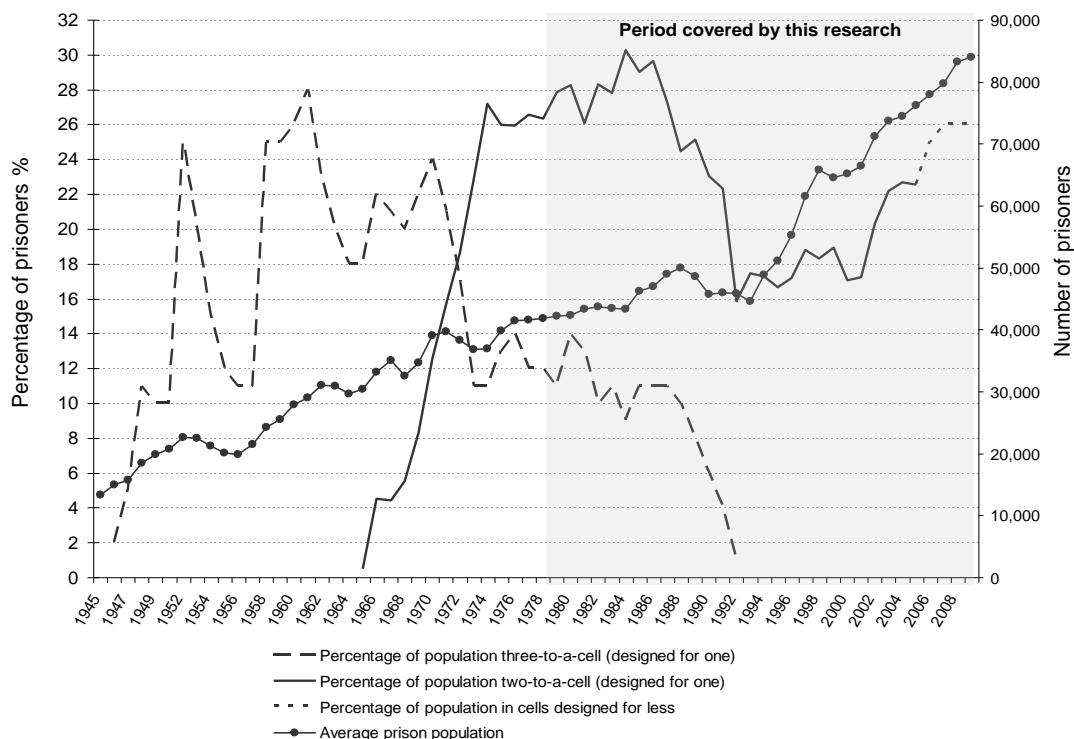
**Figure 3.4: Index of disturbances and riots across the prison system<sup>45</sup>**



Source: Hansard electronic archive of written parliamentary answers and Lexis UK electronic press archive.

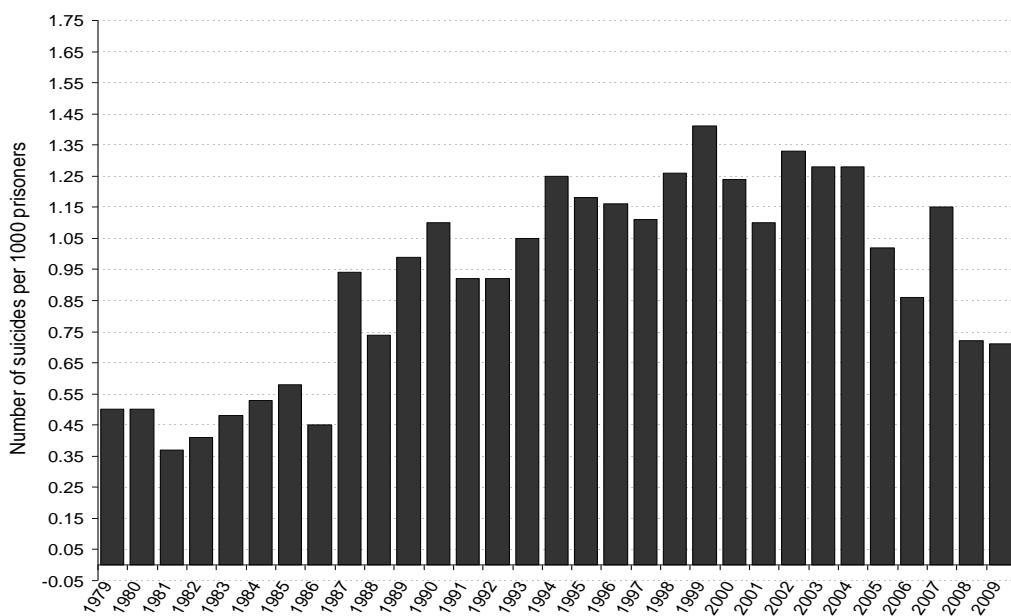
We also see improvement in standards of decency in the prison system. Practices of ‘tripling’ prisoners in cells designed for one have largely ceased (see **Figure 3.5**), and there has been much more systematic focus on the ‘moral performance’ of prisons since the early 2000s (Liebling, 2004). **Figure 3.6** below shows how the rate of self-inflicted deaths in prisons have decreased gradually since the early 2000s, even though it had been allowed to increase quite considerably throughout the 1980s and 1990s. Top officials have referenced this reduction as evidence of a more decent prison system during the last decade or so. Others have pointed out however that, in the confined and highly controlled environment of prisons, the scope for monitoring and intervening to avoid self-inflicted deaths means that it should be possible to get much closer to near-zero levels of suicides.

**Figure 3.5: Percentage of prisoners ‘tripled’ or ‘doubled’ in cells designed for one, since 1945**



Source: Hansard electronic archive of written parliamentary answers, and subsequently Ministry of Justice data 2011.

**Figure 3.6 Rate of self-inflicted deaths in custody, per 1000 prisoners**



Source: HM Prison Service and NOMS annual reports. Cross-checked against data reported in Hansard archives.

Since 1979 we have also seen expansion of services and programmes, and more intensive performance management. **Table 3.1** shows the expansion of the performance regime across thirty years.<sup>46</sup> Throughout the first half of the 1980s, Prison Department annual reports featured three indicators for performance in graphical tables, the rate of overcrowding, the cost per place of different types of prisoner, and the number of escapes from prison and prison escorts. From the mid-1980s, annual reports began to publish the number of hostage or violent incidents in the system, as well as data on the number of hours spent by prisoners in education and physical exercise. By the start of the 1990s however, annual reports were publishing performance data on rates of overcrowding, hours of education, hours spent on purposeful activity, numbers of assaults and incidents, escapes, and cost per prisoner place. From 1992, these data began to be reported against formal performance targets (Key Performance Targets or 'KPTs'). Although some of these targets seem arbitrary, they did at least represent a much more systematic approach to defining and measuring performance. Often however, targets would be discontinued or recalibrated in such a way that it is practically impossible to establish any long term continuity in performance assessment.

An important expansion in prison programmes came with the introduction of targets for drug treatment and offender behaviour programmes (rows 3 and 4 in Table 3.1). The problem of drug addiction amongst prisoners was not a new phenomenon, however, in 1995 the Prison Service began to report the percentage of positive random drug tests, and linked that to a target to reduce the proportion found positive compared to the equivalent three months from the previous year. By 1998, this had changed into a target to keep the number of positive random tests to below 20 per cent, and by 2001, this target had decreased to 16 per cent and was met. In the subsequent years, the rate of positive detection was stable at around 11 per cent. From 2005, an additional target was introduced to complete 5,240 drug treatment programmes, increasing to 5,923 in 2006, and 6,595 in 2007. Again, it is impossible to tell to what extent these increases led to successful outcomes in reducing addiction.

### Chapter 3

**Table 3.1 Summary of performance-related data and performance targets published in annual reports**

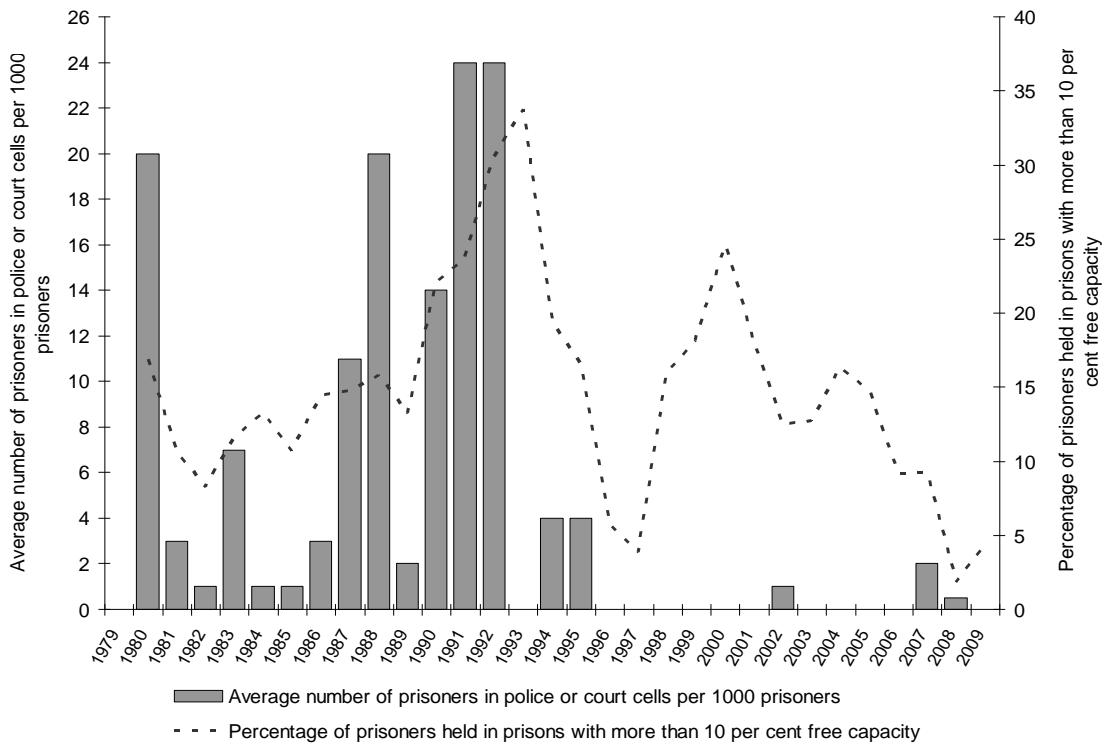
		Prison Department inside the Home Office												Prison Service Executive Agency of Home Office							Prison Service in NOMS	NOMS											
		Data published in the annual report												Key Performance Target																			
	Performance area	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	
1	Escapes	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	3	3	3	3	3	2	2	2	2	3	3		
2	Overcrowding	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
3	Offender behaviour																1	1	2	2	2	2	2	2	2	1	1	1	1	3	**		
4	Drugs																1	1	1	1	2	1	1	1	2	2	2	2	2	2	2	1	
5	Cost per place	1	1	1	1	1				1	1					1	1	1	1	1	1	2	2	2	2								
6	Assaults															1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
7	Resettlement																									1	1	1	2	2	2		
7	Education										1	2	2	3	2	1										1	1	1	1	1	1	*	*
8	Purposeful activity															1	1	1	1	1	1	1	1	1	1	1	1						
9	Staff sickness																				1	1	1	1	1	1	1	1	1	1			
10	Race equality																					1	1	1	1	1	1	1	1	1			
11	Time out of cell																1	1	1	1	1	1	1										
12	Suicides																									1	1	1	1	1			
13	Sanitation															1	1	1	1														
14	Visits															1	1	1	1	1													
15	Staff education																			1	1	1											
16	Correspondence																					1	2										
17	Incidents														1	1	1	1	1	1	1												
18	Prisoner escorts														1	1	1	1	1	1													
19	Farms	1																															
20	<b>TOTAL SCORE</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>5</b>	<b>5</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>10</b>	<b>11</b>	<b>13</b>	<b>16</b>	<b>14</b>	<b>16</b>	<b>15</b>	<b>13</b>	<b>13</b>	<b>13</b>	<b>14</b>	<b>10</b>		

**Source:** Prison Department, Prison Service, and NOMS annual reports, 1979 to 2009.

From the mid-1990s the Prison Service also began to report its performance in delivering offender behaviour programmes. A performance target was introduced in 1996 which aimed to ensure that 'at least 1,300 prisoners completed programmes accredited as being effective in reducing re-offending', half of which should also complete a sex offender treatment programme (HMPS, 1996). The completion target for offender behaviour programmes increased year-on-year up to the middle of the next decade, so that by 2000, the Prison Service aimed to complete 5,000 programmes, rising to nearly 8,500 by 2003 (HMPS, 2003). The number of sex offender programmes doubled by 2003. Even if it is difficult to assess the integrity of performance targets, they nonetheless suggest that the system has expanded its productive output in ways which are systematically geared towards achieving rehabilitative interventions. Say, for example, that each offender behaviour programme in 1996 involved the same amount of output as those in 2003. In 1996, completion of 1,300 offender behaviour programmes equated to around 1 in every 43 prisoners. In 2003, completion of 8,500 programmes equated to around 1 in every 9 prisoners. This represents a considerable beefing up of productive activity focused on rehabilitative outcomes.

There are signs that available capacity in the system has been much efficiently used from the mid-1990s onwards. **Figure 3.7** shows how throughout the 1980s, the system maintained relatively high levels of inefficient use of available capacity, while at the same time, relatively high levels of use of police and court cells to deal with overflow of prisoners during times of acute population stress. A period of upheaval in the system around the early 1990s meant that inefficient use of capacity increased at the same time as use of the police and court cells. This can be explained by localized capacity shortages in prisons, despite the fact that the national system still has considerable free capacity in other types of accommodation. From the early 2000s, however, there are signs that available capacity in the system has been more efficiently used. The extent of 'inefficient' free capacity in the system has been managed down to almost zero, use of police or court cells has fallen to practically zero levels.

**Figure 3.7: Indicators of effective capacity management in the prison system**



**Source:** Prison Service and NOMS annual reports, and Hansard parliamentary written answers, 1995 to 2009

Using these indicators of performance, it is possible to create a composite multiplier which allows us to compensate for some important changes in quality over the years. We can use seven variables to adjust basic productivity so that it takes some assessment of quality and expansion of services into account. These can be organized into three general areas.

*On security objectives:*

- Total escapes from prisons and escorts per 1000 prisoners (*Figure 3.3*);
- Riots and disturbances index (*Figure 3.4*);

*On decency objectives:*

- Percentage of prisoners sharing cells designed for less (*Figure 3.5*);
- Number of self-inflicted deaths in custody per 1000 prisoners (*Figure 3.6*);

*On management of the system and expansion of services:*

- Performance regime index (*Table 3.1*);
- Total police cells used per 1000 prisoners (*Figure 3.7*);

- Percentage of prisoners in prisons with more than 10 per cent free capacity (*Figure 3.7*);

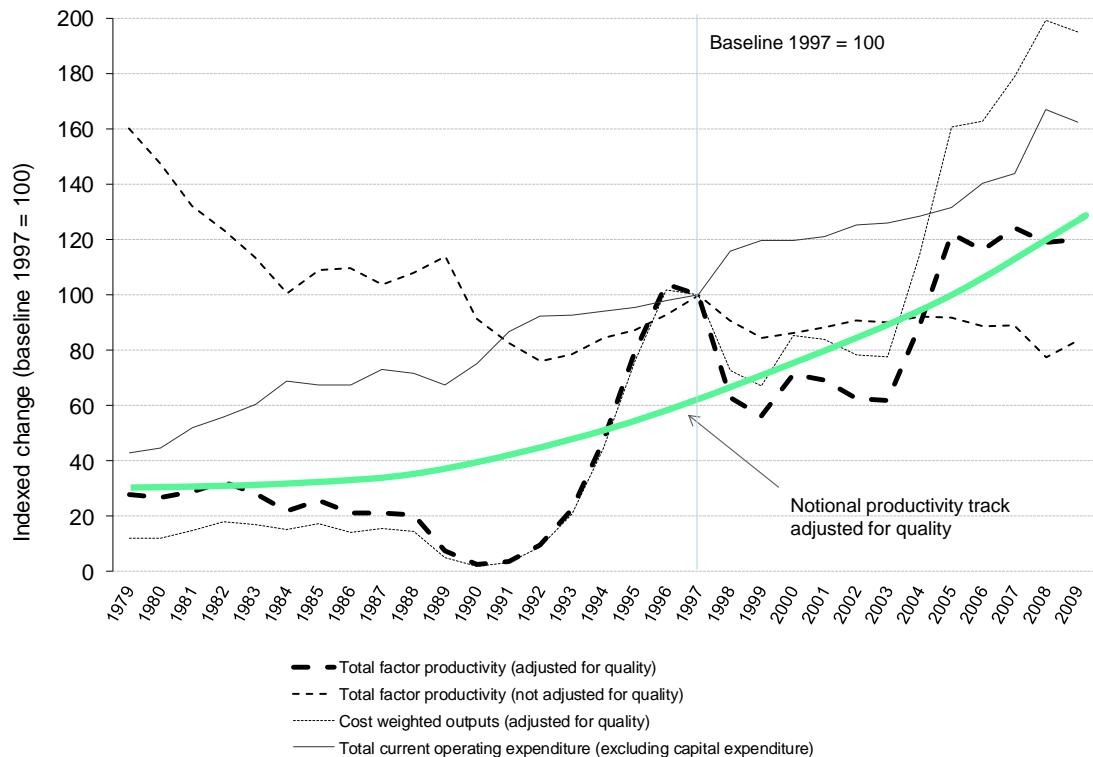
**Table 3.2** below lists these seven indicators along with the appropriate data for calculating quality adjustments. The method used for calculating the quality adjustment scores in rows 1 to 7 is explained in Appendix A3. In basic terms, the variations in each of the indicators have been coded into one of ten possible deciles, from 0.1 to 1. The higher the score, the more desirable the outcome in terms of performance. An overall adjustor score is calculated by multiplying all seven of these decile scores (row 8). These scores are then smoothed using two-year averages (row 9). I then multiply the adjustor score by cost-weighted outputs (row 10), to give a new quality-adjusted cost-weighted outputs (row 11). These are then divided by inputs (row 12) to give a new quality adjusted total factor productivity index (row 13). The quality-adjusted productivity tracks are shown in **Figure 3.8**.

**Table 3.2: Scores for seven key quality indicators for the prison system, and calculations for quality-adjusted total factor productivity, 1979 to 2009**

	Performance area	Prison Department inside the Home Office												Prison Service Executive Agency of Home Office							Prison Service in NOMS		NOMS									
		1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
1	Total escapes from prisons and escorts per 1000 prisoners	0.6	0.8	0.6	0.7	0.8	0.7	0.7	0.8	0.8	0.7	0.5	0.3	0.4	0.6	0.8	0.9	0.9	0.9	1.0	0.9	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0		
2	Riots and disturbances index	0.9	0.9	0.9	1.0	1.0	1.0	0.8	0.8	0.6	0.8	0.3	0.3	0.3	0.8	0.8	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	1.0	1.0	1.0	0.9	0.9	
3	Percentage of prisoners sharing cells designed for less	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.4	0.5	0.6	0.6	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7	0.7	0.7	0.6	0.6	0.6	
4	Self-inflicted deaths in custody per 1000 prisoners	0.8	0.8	0.9	0.9	0.8	0.8	0.8	0.8	0.6	0.7	0.6	0.5	0.6	0.6	0.5	0.4	0.4	0.5	0.5	0.4	0.3	0.4	0.5	0.3	0.3	0.3	0.5	0.6	0.5	0.7	0.7
5	Performance regime index	0.5	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.6	0.6	0.6	0.6	0.6	0.7	0.8	0.8	0.8	0.8	0.8	0.8	0.9	1.0	0.9	1.0	1.0	0.9	0.9	0.9	0.9	0.8	
6	Total police cells used per 1000 prisoners	0.7	0.7	0.8	0.9	0.9	0.9	1.0	0.9	0.7	0.7	0.7	0.6	0.3	0.5	0.8	0.9	0.9	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
7	Percentage of prisoners in prisons with more than 10 per cent free capacity	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7	0.8	0.7	0.6	0.4	0.3	0.3	0.5	0.8	0.9	0.9	0.8	0.6	0.6	0.6	0.8	0.8	0.8	0.9	1.0	1.0	1.0	
8	Total multiplier for quality adjustment	0.04	0.04	0.04	0.05	0.06	0.05	0.04	0.06	0.03	0.06	0.02	0.01	0.002	0.02	0.04	0.08	0.15	0.23	0.23	0.18	0.10	0.17	0.17	0.15	0.13	0.15	0.25	0.30	0.24	0.34	0.30
9	Two year average multiplier for quality adjustment	0.04	0.04	0.05	0.05	0.05	0.05	0.05	0.04	0.04	0.04	0.01	0.01	0.01	0.03	0.06	0.12	0.19	0.23	0.21	0.14	0.14	0.17	0.16	0.14	0.14	0.20	0.28	0.27	0.29	0.32	0.30
10	Cost-weighted outputs index (not yet adjusted for quality)(baseline 1997)	69	66	69	69	69	74	74	76	77	77	69	72	70	73	80	83	91	100	105	101	103	107	114	114	118	121	125	128	129	136	
11	Quality adjusted cost-weighted outputs index (baseline 1997)	12	12	15	18	17	15	17	14	16	15	5	2	3	9	21	44	76	102	100	73	67	85	84	78	78	114	161	163	179	199	195
12	Total current expenditure on prisons index (baseline 1997)	43	45	52	56	60	69	67	68	73	72	68	75	87	92	93	94	96	98	100	116	120	120	121	125	126	129	132	140	144	167	163
13	Quality-adjusted total factor productivity (baseline 1997)	28	27	29	32	28	22	26	21	21	20	8	3	4	10	23	47	80	104	100	63	56	71	69	63	62	89	122	116	124	119	120

**Source and notes:** See Appendix A3 for full details of these variables and the calculations for quality-adjusted productivity.

**Figure 3.8: Revised productivity tracks after adjustments for performance quality**



**Source:** The variables and calculations involved are summarized in Table 3.2.

The impact of this quality adjustment on overall productivity is striking. As data in Table 3.2 above shows, improvements in security, decency and order, and management quality in the system, all impact on the outputs line to accentuate positive change over time. The impact of this on total factor productivity is something like a fourfold increase over thirty years, shown by the smoothed dotted line in Figure 3.8 above. Quality-adjustment has shown how the prison system, in some important ways, has made steady improvements over the long term.

### 3.3 Countervailing dynamics of managerialist change

Thirty years is a long timeframe for any public policy system.<sup>47</sup> Relativization of change (or lack of it) can take place on different dimensions and suggest different ways of interpreting the same outcomes. For those who experienced the realities of working in local prisons throughout the 1970s and 1980s, it may be difficult to look at the current

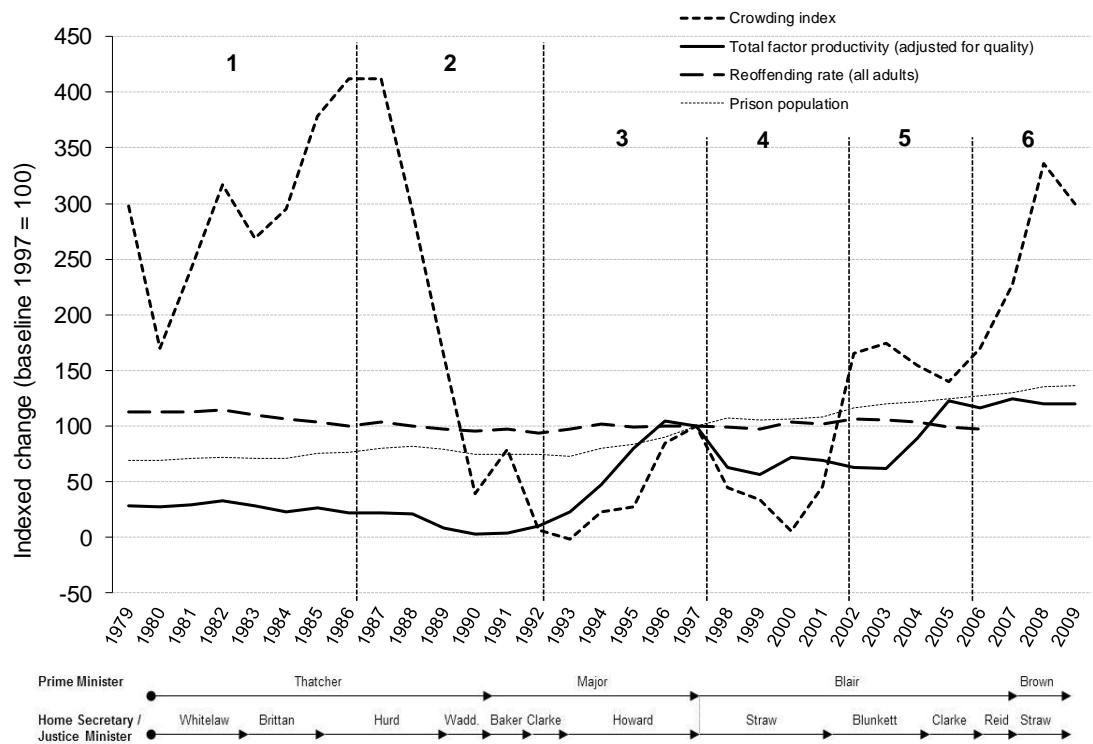
day system as anything other than an improvement. One experienced female governor put the problem in relative terms.

There's a load of governors today who don't remember Strangeways, Whitemoor, Long Lartin.<sup>48</sup> This disorder. They've joined since then. They've always known a prison system where prisoners had their property in a little box. Quite ordered. I think, Christ, when I was there...when [officers] refused to lock up because they were watching the boxing, I didn't know that was a 'passive demonstration'. I just had to find a way of dealing with it. <sup>[#9]</sup>

In many ways, therefore, managerialism has created a basis for legitimacy. It has underpinned a greater order and discipline. It has allowed the system to improve despite the rapid rise in the size of the short-term prison population since the early 1990s, and an increase in levels of crowding throughout the 1990s and 2000s. Managerialism, however, can have compensating and aggravating influences. It may allow the system to cope, but it may also cause the system to have to cope. In the second half of the chapter, I discuss these aggravating dynamics, based on observations and insights from interviews and analysis.

In **Figure 3.9**, I have reproduced the quality-adjusted productivity line from Figure 3.8, and added a 'prison crowding index' line which depicts a weighted scale of crowding in the system above 'normal' capacity.<sup>49</sup> The relationship between the two trends is one of convergence and co-development. Throughout the 1980s, crowding remains relatively high and performance of the system shows no change. By the start of the 1990s, however, crowding has reduced considerably and both trajectories thereafter, broadly speaking, move on an upward path together. By the end of the 2000s, crowding has risen once again to levels equivalent with the 1980s, while performance has risen only gradually in comparison. This suggests that the system has improved its performance despite increase in crowding. I outline six periods of change which help to periodize developments over three decades. In **Table 3.3**, I also outline five areas of managerialist change along rows A to E. In the rest of this chapter I discuss some countervailing effects of managerialism in each.

**Figure 3.9 Comparing indexed rates of change in crowding and quality-adjusted productivity**



**Table 3.3 Key features of managerialist change**

Aspect of managerialization	1 1979 to 1986	2 1986 to 1992	3 1992 to 1997	4 1997 to 2002	5 2002 to 2005	6 2005 to 2009
<b>A General policy features</b>	Reformist intent	Progressive reform	Penal austerity and security	Penal pragmatism and security	Early NOMS and offender management	Offender management and integrated NOMS
<b>B Regimes</b>	Brutal regimes	Unrest and riots	Focus on standards and conditions	Focus on decency and programmes	Intensive performance management	Greater focus on reducing reoffending
<b>C Staff</b>	Industrial relations crisis	Overtime buy-out	More centralized coordination	Strong line management and workforce reform	NOMS counteracts hierarchical line management	
<b>D Physical capacity</b>	Capital investment	Prison building programme	Free capacity and private sector	Emergency accommodation	Maturation of private sector	Curtailed prison building programme
<b>E Prison population</b>	Coordination of the prison population at regional level		Move to centralized and national level coordination		Strong national population management	
<b>F Capacity standards</b>	CNA specifies uncrowded limits – local prisons exceed these continually		Operational Capacity introduced as a limit on crowding	CNA and Op Cap used as ‘control through counterbalance’ – denotes a crowded system which is allowed to stretch to accommodate increase in prisoners		

Looking first at the change in general policy priorities (along row A in Table 3.3), a major theme has been the increasing political emphasis put on reduction of escapes and security of the system since the mid-1990s. Senior officials acknowledged a general ambivalence towards escapes during 1970s and 1980s. As one former senior official from the early 1990s pointed out, ‘when I was there, we lost a prisoner from Cat A prison, from Parkhurst, and I don’t think ministers batted an eyelid. It appeared in the newspapers, but the press didn’t understand what a Cat A was’.<sup>[#10]</sup> Since the Whitemoor and Parkhurst escapes in the mid-1990s, however, policy priorities appear to have intensified. For many, the political and financial investment in security has distracted from other more expansive objectives of prison. One experienced former governor captured this commonly expressed view.

If the Service starts getting very proud about the fact that it has had very few escapes in 2009, I think it’s wrong for them to be able to bask in that type of glory. I think they ought to be asked to be doing much riskier, more imaginative things, which extend staff more than I see happening now.<sup>[#11]</sup>

Some critics suggested that managerialist performance targets have allowed the prison system to sustain excessively narrow conceptions of success, based particularly around security outcomes. A current governor pointed out the inherently constructed basis on which the prison system has judged its own performance.

We are an organization which has hitherto been allowed to define what success is. That is a problem. You can tell how good the Prison Service is because we tell you how good we are. We have had three escapes and so on. But we have chosen to define success very narrowly in these terms. Security is everything...security, security, security.<sup>[#12]</sup>

While many interviewees criticized the perceived narrowing down of priorities towards security, others recognized exactly the opposite problem, one of excessively ambitious and unrealistic policy goals inherent in the move towards ‘offender management’ throughout the 2000s. At the heart of this policy shift has been a strong emphasis on rehabilitative goals, in which the prison system through NOMS has been directly implicated. For many interviewees, however, this policy shift has involved unrealistic ambition in what the system can be expected to achieve given the financial and political resources which have been made available. In this sense, the norms of managerialism

underpin an idea that ambitious policy outcomes can be instrumentally willed, designed, and implemented. But the aggravating problem here has been perceived disparity between the inherent ambition of offender management, and the reality of the system working at close-to-tolerance levels, and coping with continuous crowding and ever-tightening resources. As one former senior NOMS official put it, ‘the mundane fact is that NOMS, ever since it was established, its scale of ambition has never been commensurate to its capacity’.<sup>[#13]</sup>

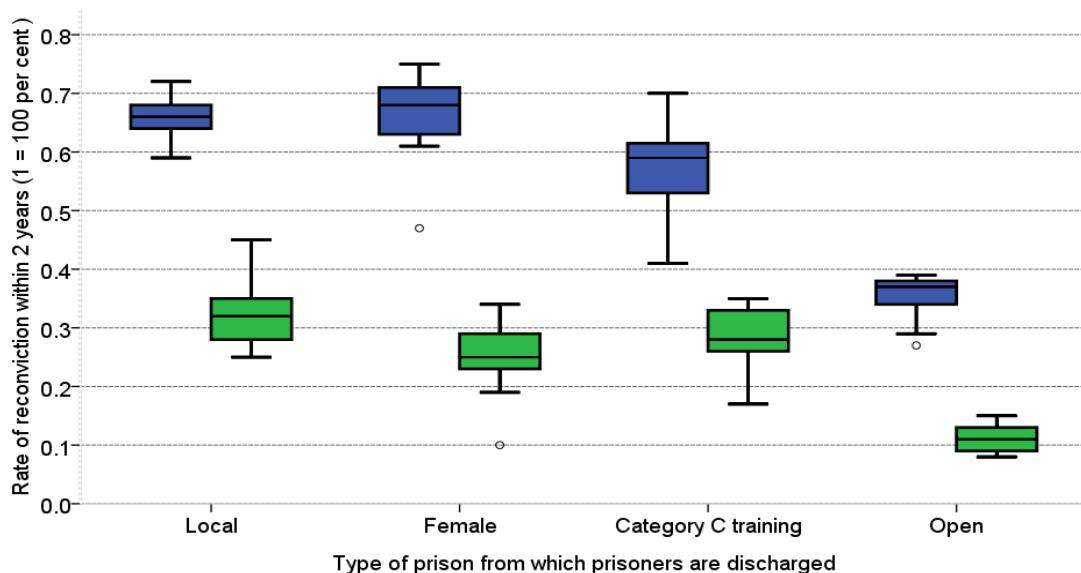
The impact of managerialism has been strong in the area of the prison regimes (along row B). We have seen above in Table 3.1 how the performance management regime intensified from the early 1990s onwards. Performance targets, however, generate a particular type of legitimacy in the system, based on what those specific targets prioritize, and more importantly, what they deprioritize. Governors frequently talked about the constraining effects of having to focus on meeting performance targets rather than on thinking more expansively about rehabilitative outcomes in their own prison. One pointed out that ‘we can’t make links between scale of ambition, reality of crowding, and entropy in the system. That’s because everything is target-driven. Everyone spends all day looking at how you make a target rather than (how you) make a difference’.<sup>[#14]</sup>

The impact of local prisons in ‘making a difference’ in terms of reducing reoffending has seemed distinctly limited however. Official data on rates of reoffending by prisoners released from local prisons show almost no variation at all (see **Figure 3.10**), suggesting strongly that there is little or no relationship between the quality of the regime inside a local prison and the likelihood that prisoners from that prison will reoffend. The structural inclination therefore for those in the system to be fatalistic about the benefits of focusing on rehabilitative goals is borne out by the data. It becomes difficult to make an argument for investing politically or financially in pursuing rehabilitative goals. This is reinforced by the basic fact that the prison system, for all its emphasis on performance management and targets, has never had a specific outcome target for reducing reoffending, either for the whole system or for individual prisons. A former Prisons Minister captures the syndrome involved.

There is nothing sophisticated enough on the reoffending side of the argument to counter the managerialist approach to things. This is one of the huge weaknesses

of the system. The success of the system is only judged by outcomes for security, or outputs for resettlement or trying to prevent reoffending. So it's a very loose argument that you can make...on reoffending.<sup>[#15]</sup>

**Figure 3.10: Rates of reoffending within two years after discharge from different types of prison, for sentences less than 12 months (dark shaded on left side) and more than 12 months (light shaded on right side)**



**Source:** Ministry of Justice 2011 data. Boxplots give a visual indication of the interquartile range and the mean of a set of data points. In this Figure, the boxes show the interquartile range, and the black line inside the boxes shows the mean. The tails of the boxes show the distribution of the remaining data points outside the interquartile range, which are not considered statistical 'outliers'.

Experienced officials also raised questions around the actual effectiveness of many of these programmes and treatments provided to prisoners over the years. This is particularly the case for short-sentence prisoners who are in custody for a matter of months. A former top official reflected on the futility of providing short-sentence prisoners with education programmes, for example, and the need to think more strategically about the use of resources on programmes and treatments for this short-term population.

I would have taken all rehabilitative activity out of local prisons other than detox. And I would have just concentrated on areas where you could make a difference. I was coming to the conclusion that throwing a few hours of education at someone for a few weeks where it wouldn't change their employability, was a waste of time. We should concentrate it where we could make an impact.<sup>[#16]</sup>

The third dimension of managerialism has been the increasingly centralized control and coordination of staffing and line management (along row C). Throughout the 1980s, the system focused on dealing with the weaknesses identified in the 1979 May Inquiry - chaotic and unmanaged oversight, wide variations in practices and standards, and dysfunction in industrial relations and staff cultures (HO, 1979a). We have seen how the eradication of overtime in the late 1980s did much to systematize pay and conditions across the system. The establishment of area managers from the early 1990s set the framework for centralized command-and-control line management nationally. Interviewees talked about the constraining effects of centralized performance management coupled with strong command-and-control cultures throughout the 1990s and 2000s.

Managerialism, if you are not careful, really means that you forget some of the fundamental things you are there to do. Because you will not get a good annual report if you say as a governor 'I've improved fifty prisoners this week but I've overspent on my budget. You'd get shot. People are very focused on their targets and the next inspection. That's what you're thinking about. Have I done everything to meet my bit of the balance scorecard. Because that's what the governor will be asked by the area manager' <sup>[#17]</sup>

More centralized line management of the system throughout the late 1990s and 2000s has also incorporated attempts at 'workforce modernization', involving reform to pay, conditions, and pensions of prison staff, as well as delayering of operational and management staffing structures. For the senior officials involved, this reshaping process has involved often slow and difficult negotiations between management and staff, and often resort to centralized imposition of reform.

Some of the modernisation that we tried to do, which we had £50 million for from the Treasury, Workforce Modernization, would have paid the staff substantial reward for letting change happen. But their failure to accept the money meant that we've done it in spite of that. But it was slow. Instead of getting benefits a year ago, we are only getting changes now from losing a layer of management. It just went more slowly. <sup>[#18]</sup>

Governors have also talked about the difficulties of finding cost savings year-on-year in a public sector context in which there are considerable barriers to streamlining staff deployment. Cost savings must therefore be found by introducing more efficient ways of working, decommissioning services or facilities, or quite commonly, by not refilling

posts once staff retire or leave. Not refilling posts serves governors as a somewhat blunt instrument for responding to requests from headquarters to find requisite savings. One deputy governor characterized the ‘bind’ commonly articulated by governors across the system.

Usually, you’d be looking to reduce your staff headcount down, but there’s no mechanism to reduce staff headcount with redundancy. So you are stuck with your staff, stuck with your costs, and the money is being taken out of your budget. <sup>[#19]</sup>

Often this can lead to perverse situations of staff obsolescence and inefficiency whereby facilities or services are shut down in the prisons in order to save costs, but the staff who operated those facilities remain in the system as ‘surplus’. This allows the system to perpetuate the illusion of cost savings despite the fact that staff costs are still incurred.

One governor characterized the peculiarities involved.

If they say to me, you’ve got to save £100k, and I say well, I’ll shut that workshop. And that four people are my £100k saving. I can’t make them redundant, so I declare them as ‘surplus’. I don’t actually save it, I save it on paper. So when a Minister stands up and says we’ve saved fifty million pounds in the Prison Service, we have saved it on paper, but the chances are that we are still spending £43k of it every month. We are still paying the wages. What it means is that if another job turns up somewhere else and they fit the criteria, then they are duty bound to move. There are so few jobs anywhere that people just remain. I’ve got people here who have been surplus for years. <sup>[#20]</sup>

The concept of making staff ‘surplus’ was acknowledged by many as indication that, despite claims that establishments and the system as a whole is running at ‘close to tolerance’ levels, there is still obsolescence and inefficiency in overall staff capacity. As another governor pointed out, ‘it’s not the fault of the governor. It’s the system that has no mechanism for realizing these savings <sup>[#21]</sup>

The fourth aspect has been increasing centralized coordination and management of the development of physical capacity in the estate (along row D). The countervailing dynamics of managerialism are potentially complex in this respect. One major theme here has been the growth of private sector markets for new prisons since the early 1990s. During this time, most new prisons have been built through Private Finance Initiative (PFI) contracts with private sector consortia, and for much of the 1990s and early 2000s, government as a result was able to limit its own exposure to the capital costs of these new assets by keeping the capital element off its balance sheets, and subsidizing new

capacity through current expenditure payments to contractors. As many interviewees have pointed out, the short and medium term benefits of procuring managed prison capacity through these PFI-style contracts have by far outweighed any long-term implications and costs. The consequence is however that these private sector solutions have offered quicker and cheaper prison capacity during times of increasing prison population. The knock-on effect is that government has been able to rely on these short and medium term solutions, and deprioritize any longer term thinking or strategizing about the role of prison and the design of the physical estate.

Linked to this too is the role that the private sector has played in facilitating quick-fix ‘emergency’ accommodation in response to the increase of the short-term prison population from the mid-1990s onwards. Short-term accommodation has been added to existing prisons in the form of expansion programmes, new houseblocks, and pre-fabricated modular units. There is however a risk that in relying on such short-term measures, the system compounds the problem of sub-optimal distribution of capacity geographically. Short-term accommodation may well allow the system to cope, but it also runs the risk that obsolescence and inefficiency is built into the system if short-term measures become institutionalized as long-term solutions. In this sense, the pressure to cope in the short term undermines value for money in the long term.

The final countervailing dynamic (along row E) relates to the move towards more centralized management of the prison population. In order to compensate for an inherently imperfect configuration of physical capacity in the estate, the system has had to move prisoners around the estate. The practice of moving prisoners has long been a central part of the system anyway. Prisoners enter through local prisons serving the courts, and depending on the length and requirements of their sentences, are then often (although not always) moved into training prisons or open prisons. Additional to this standard movement has been the practice of moving prisoners between local prisons, particularly those on shorter sentences, in order to manage geographical disparity in demand and supply. The practice of moving prisoners from local to local prisons in order to maximize capacity and make room for new intakes is known as ‘overcrowding drafts’ and has become a vital centrally-managed ‘life support’ function in order to keep the prison system operational.<sup>50</sup> As one governor reflected, ‘the efficiency with which the available capacity is used is phenomenal. I don’t know how many hotel chains

manage to operate at 98 per cent capacity. I suspect none. It's an extraordinary machine that moves prisoners round the country, all day, every day'.<sup>[#22]</sup> **Table 3.4** illustrates the scale of continual movement of prisoners on overcrowding drafts.

**Table 3.4: Overcrowding drafts from region to region, July 2008 to July 2009**

Most common prisoner movements from region to region		Number of prisoners sent	Number sent in reverse	Percentage of all prisoners sent by the sender
Sent from	To			
West Midlands	North West	3,900	200	90
London	West Midlands	2,110	80	66
South East	London	920	350	32
South East	West Midlands	480	60	17
London	Eastern	450	160	14
Eastern	East Midlands	450	100	32
London	South East	350	920	11
North West	Yorks & Humber	300	190	36
South East	Eastern	230	120	8
South East	East Midlands	210	100	7
South West	West Midlands	210	100	26
East Midlands	Yorks & Humber	190	180	28

**Source:** Data provided by NOMS population management unit.

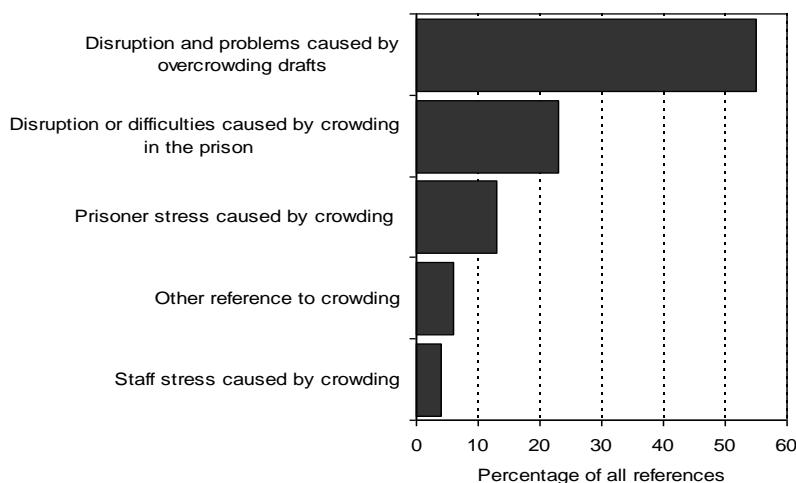
The managerial paradox here is striking. It is widely acknowledged that centralized management of the prison population has been vital in keeping the system operational and allowing it to maximize available capacity and minimize the number of prisoners held in police cells (Figure 3.7). Yet it is has been short-sentence prisoners who have traditionally been moved in order to make room for new intakes. The act of the moving them away from their localities is seen by many as working directly against the objective of reducing reoffending. As many officials and governors have pointed out, it is much harder to link these short-sentence prisoners with vital services in the community, and it is in building these links that the system is able to reduce the chances that prisoners will not reoffend. Interviews with local authorities, chief probation officers, and prisoner charities all agreed that there was a direct link between the extent to which short-

sentence prisoners were moved and the extent to which they were able to establish strong links with them both in prison and on discharge. One experienced governor in a large urban local explained the potentialities of being able to keep prisoners relatively close to the communities to which they would return on discharge.

I had the regional Chief Officer for drugs and alcohol intervention in here last week. I said we are going to keep these prisoners. He said, 'What...you're not going to send them anywhere? So I can send my workers to you?' That becomes a serious conversation then. Two years ago I would have said yes but I can't guarantee that I'll be able to keep them here...what with the population pressures.<sup>[#23]</sup>

The disruptive effects and the risks of moving short-term prisoners around the system were acknowledged by many senior officials and governors. **Figure 3.11** shows how references to crowding in the prison system made in HM Inspectorate reports since 1998 have predominantly been related to these disruptive effects on short-term prisoners.

**Figure 3.11: References to crowding made by HM Inspectorate reports, and specific focus of the reference, 1998 to 2009**<sup>51</sup>



Source: HM Prisons Inspectorate inspection reports.

We have seen already how the prison system has been run continually at levels of capacity close to 100 per cent, and the population management function has been critical in allowing this to happen. For many officials, there are risks at running at close-to-tolerance levels. A former NOMS official characterized the peculiarities of the prison system in this respect.

When you've got a system that is that volatile, you shouldn't be trying to manage it within 1 per cent of capacity. It's a ludicrous thing to try and do. I've had several ministers who have brought in their men who run hotels. And they just looked at me with utter amazement when I said we were running with 99.3 per cent capacity. How the bloody hell do you do that? They just sort of stagger away as ministers tell them to tell us how to do it more efficiently <sup>[#24]</sup>

Not only does the system run at these continually close-to-tolerance levels, but it also does so despite incorporating striking obsolescence. For example, similar logistical operations in modern commercial settings in the late 2000s, such as hotels, would involve sophisticated electronic or automated systems. For population management staff in headquarters, however, the process has relied predominantly on managers using pencil, paper, telephone and email, and up until mid-2010, there was no centralized electronic prisoner management system. Many officials recognize this obsolescence, and the operational risks involved. Yet they also point out the inherent constraints involved in automating this process. As one former NOMS official explained:

It's not unfamiliar to find the Prison Service lagging behind most areas of public life, never mind the public sector when it comes to the use of technology. You are not the first person to look at Pop Man<sup>52</sup> and say why? But no computer I've seen has got the flexibility in the 'black arts' that they demonstrate. It would be great to try. But the transition would be high risk. <sup>[#25]</sup>

In this quotation, we see how cultures and perceptions of coping in the system make the prospect of system modernization seem too difficult to risk. Frustratingly, complexity is both a product of sustained obsolescence and a rationale for why this obsolescence cannot be modernized. It is a clear example of how benign resistance to such modernization feeds into sustaining this obsolescence.

### **3.4 Conclusions**

We have seen in this chapter some important countervailing dynamics at the heart of managerialism in the prison system over thirty years. Clearly, different aspects of managerialism have helped the system to achieve improvements in its performance – particularly in security, decency and order, and general management. This supports an argument that the prison system over thirty years can be seen as anything but a failing system. The productivity trends reflect increase in resources flowing into the system, and

a basic expansion of outputs provided in return. A former senior official in the Prisons Inspectorate characterizes this expansion.

The reason that a lot more resources have gone into prisons is that they are doing a lot more. Twenty or thirty years ago, prison was a place where you were banged up and went out. We are expecting prisons to do work and expecting staff to do some work. Huge amounts of money for drug treatment, arguably far too much. We have put healthcare to deal with mentally ill. Money for resettlement work. And security. And it's not just one guy anymore. I mean, sophisticated security machines. The difference is that prisons are actually doing something.<sup>[#26]</sup>

Managerialism has played a central role in this expansion. Indeed, it has underpinned and shaped its development. It has also shown conclusively that it is possible to achieve its targets while at the same time coping with CCS. As one current governor put it,

The currency of overcrowding gets devalued with every year that we are successful; we complete our KPTs, and show we can do it. Last year was our most successful year. Last year the Prison Service met all its KPTs. That's a successful business isn't it? Your headlines are down, not as many escapes, no riots, met all targets, how much more do you want?<sup>[#27]</sup>

Clearly, however, there is rhetorical inflection in these words which suggests that there may be much more that one *could* want from the prison system. As the second half of this chapter has sought to show, managerialism has done much to feed into and sustain capacity stress. Having provided a basis for improving the system, it has simultaneously tightened the system, and focused its logic upon achieving value-based goals which seem, in many ways, both too narrow and too wide. The process of tightening in this sense has various meanings. It refers to continual budgetary squeezing of prisons and staffing. It refers to efforts by managers and ministers to maximize the available and latent capacity in the system. It refers to centralized and command-and-control mechanisms which have allowed the system to run at increasingly close-to-tolerance levels. And it also refers to the logic of performance management and targets which has had the effect of focusing and constraining the actions of those subject to them. This senior Inspectorate official characterized the aggravating dynamics.

It's a kind of...worst place. You are resourced to do a lot more than containment [of prisoners], but you are not resourced well enough to do the real rehabilitation work, that it says on the tin, and says in the aims of the prison service. That would

require more space, fewer prisoners, more headroom. All the fancy stuff about offender management is posing the possibility of individualized planning for each prisoner. And you are moving people in industrial quantities around the place.<sup>[#28]</sup>

As the *problematique* depicts, managerialism provides a particular kind of basis for legitimacy, in allowing the system to cope successfully and to deal with obsolescence and inefficiency. In this sense, it is a compensating factor. But we have also seen how managerialism itself incorporates aggravating dynamics, which have tightened the system and constrained the ability of actors within it to deal effectively with more expansive or ambitious value-based goals. In developing a logic of performance based around improvements in security, decency, and general management, it has arguably distracted from and therefore weakened focus on more expansive and ambitious rehabilitative outcomes of prison.

The other thing about overcrowding and capacity is that it is a relatively easy thing to deal with compared to the real job that the prison service has which is trying to change people's behaviour and attitudes. Bussing people around the country isn't that difficult to organize. It doesn't require the same of sort of intellectual rigour that trying to sort out how you change people's lives does.<sup>[#29]</sup>

The paradox here is that the difficulty which the prison system has in actually impacting on people's lives feeds back into sustaining the idea that prison is a 'failing' system. This in turn leads back to managerialism as a basis for finding more legitimacy and more answers to these intractable issues. I have tried in this chapter to provide an overview of managerialist change and performance improvements over time, and to draw on the wealth of qualitative insight gained from interviews to raise some fundamental questions about the nature of these changes. I return to these themes in chapters 5 to 8. Before moving to these individual actor perspectives however, I examine another fundamental aspect to CCS, the way in which crowding has been defined and measured over the years, and how these have helped to sustain CCS. This is the theme of the next chapter.

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<sup>34</sup> Interview with a former senior NOMS official. <sup>[#3]</sup>

<sup>35</sup> Participant in a focus group with deputy prison governors.

<sup>36</sup> Positive productivity may result from increases in the prison population, and for many observers this is a sign of wider 'failure' to avoid use of prison. In this sense, output-driven productivity improvement may be seen

paradoxically as the ‘wrong’ kind of improvement, one which is in fact contributing to fuelling a problem of rising prison populations rather than remedying it.

<sup>37</sup> Outputs consisted of the total average size of the prison population, cost weighted in terms of the average cost of running different types of prisons. Six types of prisons were included in this cost-weighting calculation: local and remand, high security, closed adult, closed youth, open adult, and open youth. The total costs of operating each of these types of prisons were calculated as a proportion of total costs. The number of prisoners in each type was calculated as a proportion of the total prisoners. For each type of prison, the number of prisoners was adjusted either upwards or downwards to reflect the equivalent proportion of total costs accounted for by each particular type. Inputs consisted of total current operating expenditure at base year 2009. Total factor productivity was calculated as a ratio of cost-weighted outputs over inputs. The baseline year 1997 distinguishes between Conservative and Labour governments.

<sup>38</sup> The 1979 May Inquiry and academic commentaries (HO (1979a) and King et al. (1980) identify considerable problems of under-investment in the prison system throughout 1960s and 1970s.

<sup>39</sup> Throughout the 2000s, responsibility for prisoner healthcare and education were taken out of the Prison Service control and moved to local authorities. Throughout the first half of the 2000s, local Primary Care Trusts began to take over responsibility for commissioning and provision of healthcare in prisons. By April 2006, responsibility for healthcare services was fully transferred to Department of Health, with local Primary Care Trusts responsible for commissioning and provision of healthcare services, in conjunction with the Prison Service and Home Office. Although the fact that the Prison Service does not directly carry out these services does not impact on the analysis of total factor productivity in Figure 3.1, it would impact gradually over time on the numbers of staff employed in the Service.

<sup>40</sup> All cost-weighted output data is as in Figure 3.1. Data on staff numbers, and prison officers grades, were collated using Prison Department, Prison Service, and NOMS annual reports, and Hansard electronic archive of parliamentary written answers. Data in annual reports was often not reported consistently enough to ensure continuity over thirty years. Much of this data collation therefore had to be done forensically using data reported in parliamentary written answers. This involved many hours of systematic year-by-year searching in Hansard for all data on prison staffing, and then using basic triangulation techniques to give assurance that figures were internally coherent.

<sup>41</sup> Coyle (1994) writes that ‘by the mid-1980s, [overtime] had reached an impossible situation [...] accounting for almost one third of the salary bill. Officers were discontented that they had to work so many hours overtime to earn what they considered to be a decent wage. Management was frustrated by the demand-led nature of work and the rigid staffing levels which provided staff with a set of arcane working practices which guaranteed virtually unlimited overtime’ (p139)

<sup>42</sup> This has been acknowledged in interviews with a wide range of politicians, officials, and governors. It has also been referenced frequently in generalist academic literature on the development of the prison system. Cavadino and Dignan (2003) point out that ‘although the effects have been experienced most intensely within the dispersal prisons themselves, the rest of the prison system has not been immune from the growing security syndrome’ (p181).

<sup>43</sup> In 2002, ten separate incidents were recorded from analysis of press and media. These were relatively low-level cases. Lincoln prison experienced large scale rioting in October 2002, causing £2.75m damage. It was described as the worst rioting since the Manchester riots in April 1990.

<sup>44</sup> In 2011 the Ministry of Justice published results on prisoner-prisoner and prisoner-staff assaults for each year from 2000. The number of prisoner-prisoner assaults per 1000 prisoners increased from 145 in 2000 to 180 in 2009. The total number of prisoner-staff assaults increased from 2192 in 2000 to 2873 in 2009.

<sup>45</sup> Data in Figure 3.4 is compiled by systematic search of Hansard electronic archive and Lexis Nexis UK newspaper electronic archives for all references to riots or disturbances in prisons between 1979 and 2009. Information was collated about 73 major incidents, and they were coded 1 to 5 according to severity, where 1 =Very minor (rooftop), 2 = Minor (disturbance short-lived, minor injuries, low numbers), 3 = Moderate (more serious damage, fires, injuries, larger number, less than £500,000 damage), 4 = Major (More than £500,000 damage, days lost, accommodation lost, large fires), 5 = Very major. Scores were totaled for each year, and Figure 3.4 shows the distribution of results.

<sup>46</sup> Table 3.1 provides an overview of the intensity of performance management in the prison system over thirty years. It uses reporting of outputs data in annual reports as a proxy for performance management intensity. From 1993 onwards, the Prison Service formally evaluated its activities against Key Performance Targets, and these have been reported each year in the annual report. Prior to 1993, the Prison Department did not have formalized KPTs, and hence I have coded any data tables featured in annual reports, also scoring any tables or graphs at 1 point each. Some KPTs

have been discontinued due to responsibility for that moving to another jurisdiction. After 2007 NOMS was no longer responsible for provision of education in prisons (\*). In 2009, NOMS discontinued KPTs for offender behaviour programmes (\*\*).

<sup>47</sup> See Goetz (2006), Pollitt (2008), and Pollitt and Bouckaert (2009) for discussion of the importance and relative neglect of the temporal dimension in public policy research.

<sup>48</sup> It is presumed that the interviewee used these prisons as examples of a period of upheaval, disturbances, and escapes in the system. The riots at Strangeways in April 1990 were a major turning point for the prison system, and led to the comprehensive inquiry by Lord Justice Woolf and Stephen Tumin published in April 1991. These riots lasted one week, caused around £130m damage and resulted in injury to around 150 prison staff. A disturbance at Long Lartin prison took place in April 1990, resulting in an attempted breakout and a 13-hour siege.

<sup>49</sup> The crowding index is calculated as follows. For each year, I calculated the sum of the percentage crowding in each prison multiplied by the total number of prisoners in each respective prison. For example, in Yr1, Prison A (40 per cent crowded, holding 100 prisoners) + Prison B (45 per cent crowded, holding 150 prisoners), Prison C (50 per cent crowded holding, 300 prisoners). The sum is equal to  $[(40*100)+(45*200)+(50*300)] = 28,000$ . I then weighted these annual sums according to the average percentage of crowding in local prisons and remand centres. In Yr1, for example, the average percentage crowding was 40 per cent, hence  $(28,000*40) = 1,120,000$ . For each year, 1979 to 2009, this figure was calculated, and then the series was expressed as an index with baseline 100 at 1997.

<sup>50</sup> Ministry of Justice data suggests that around one third of offenders sentenced to less than 12 months are moved on overcrowding drafts. For the period June 2008 to June 2009, 16,320 overcrowding drafts took place. This is equivalent to 16 per cent of all sentenced prisoners received into local prisons, and 30 per cent of all sentenced prisoners received into local prisons on sentences 12 months or less. Many of these drafts would involve the same individual prisoners being moved more than once.

<sup>51</sup> This figure is based on review of 224 Prisons Inspectorate reports on individual prisons, published between January 1998 and January 2009. Reports were searched electronically, and every mention of the term 'crowding' was coded, and categorized for its particular point of focus. In total, 369 references were coded.

<sup>52</sup> Common abbreviation for the centralized 'Population Management' unit based at Prison Service headquarters, responsible for coordination and movement of the prison population.

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## *Chapter 4*

### **Measuring capacity and setting crowding standards**

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*At what point does crowding start? What is ‘normal’ capacity? Who knows? It’s only relatively recently that we had Operational Capacity. Until then we had a Certified Normal Accommodation, which meant absolutely nothing at all. For years there was Certified Normal Accommodation, which was no real measure. It meant nothing. As far as your capacity was concerned, you had what you had.<sup>53</sup>*

To be able to say whether a prison or a prison system is crowded, one must have a set of definitions or standards in mind, which demarcate a threshold between states of being too crowded or not crowded enough, and what it means for the system to be about right. These states are likely to involve qualitative judgements which are not straightforward, and logistical or pragmatic considerations can mean that they are inherently adaptive. On the one hand, standards give structural integrity to a governance framework, protect values, and maintain a sustainable balance between expectations of the system and how it is set up to meet those expectations. On the other hand, standards by definition operate in and are part of the system, and therefore must be seen as part of the dynamic whole.

This chapter continues the discussion around managerialism. Public management literatures have focused on a shift as part of managerialist change from input-oriented to output and outcome-oriented standards in recent decades. In the prison system during the last thirty years, two standards have been used, input-oriented Certified Normal Accommodation (CNA) and outcome-oriented Operational Capacity (Op Cap). I show that the system has in some ways embodied this shift from the former to the latter. I argue however that the dynamics between the two standards are more complicated than just a simple shift from one to the other. It is more accurate to depict the two standards

as having evolved independently *and* in relationship to each other, sustaining a situation of control through counterbalance.

This concept of control through counterbalance has important relevance for the overall problematic. The system has had to find ways of adapting to, rationalizing, and normalizing deviance from established standards, and this has played an important part in allowing the system to cope with CCS. As I will discuss in this chapter, both CNA and Op Cap show characteristics of normalized deviance, although each in different ways. The measure CNA shows striking obsolescence as a meaningful standard, given the fact that local prisons have been crowded well above CNA for the best part of fifty years. Nevertheless, there is resistance in the system to abandoning this standard, for various reasons, and it continues to be the benchmark against which crowding is measured. Similarly, Op Cap is a managerialist quasi-outcome measure which can be used to rationalize degrees of crowding based on a judgement about overall operational safety and integrity of the prison. It is a vital part of the coping dynamic in this sense, as it provides a moveable rationale for what is acceptable in a system under continued stress.

#### **4.1 *Ex ante* and *ex post* standards for prison capacity**

An integral part of managerialist change has been a shift from input-oriented to output or outcome-oriented legitimacy.<sup>54</sup> As Christensen and Lagraeid (2002) point out, this has involved a ‘shift in accountability from the political to the managerial sphere and from input and processes to outputs and outcomes’ (p308). By input-oriented legitimacy, we mean that rules or principles which define and protect standards in public services are defined in terms of *ex ante* requirements for acceptable or necessary levels of capacity. In terms of prison capacity, an example might be a standard which stipulates that every prisoner should have a single cell, living accommodation above a certain minimum size, or a certain amount of time per day out of the cell. Output or outcome-oriented legitimacy, on the other hand, means that standards are based in an inherently *ex post* judgement about how the system has performed. For example, if prisoners can be shown to be satisfied with their living accommodation, then input standards may be seen as a subordinate concern.

As the previous chapter has discussed, the expansion in the performance regime in the prison system since the early 1990s has relied largely on output and outcome targets. This growth confirms the general perception of the shift from input to output. As I show in this chapter, however, the evolution of two standards in the prison system over recent decades depicts a more nuanced picture, one in which input and output standards have co-evolved both independently and in relationship to each other. For different reasons, these standards have been useful to different actors involved in the system, and have evolved, partly by design and partly by adaptation, into quite a complex standards ecology.

There are strengths and weaknesses to both approaches. Input standards tend to provide structural integrity in that the system is protected by *ex ante* capacity limits beyond which it cannot be allowed to stretch. They may be formalized in some way, in legislation or legal provision, or they may be deeply engrained in cultures of a system. Input standards have to be sufficiently strong to endure and be upheld to some meaningful extent. In the Victorian era, for example, decision to build prisons with single cells was deemed part of the punishment and reform process, providing opportunity for solitary reflection by prisoners and a degree of lonely punishment. In this sense, it was a guiding principle around which capacity was allocated (McConville, 1995a).

Implicit in any discussion about input standards for prison capacity is a set of assumptions or projections about what it is the system is expected to do and what level of capacity is required to enable this. The problem here is that there is no easy algorithm which says that *X* amount of capacity translates into *Y* level of performance. Neither is there any easy algorithm which says that a certain level of capacity is necessary or sufficient for the system to begin to address more ambitious objectives around rehabilitation. Setting input standards for capacity, *i.e.* prescribing minimum levels of space, human resources, or facilities for each prisoner, will not necessarily guarantee that these more ambitious goals can or will be attained. There is a conventional wisdom in the literature and amongst many interviewees that the more the system is put under strain, the less it can do for prisoners. For many, however, it does not necessarily follow that getting rid of crowding will automatically lead to more effective prisons. In fact, input standards may end up sustaining situations of inefficient oversupply.

Difficult as it is therefore to make the link between necessary or sufficient capacity and actual value-based goals of the system, it is likely that different groups who advocate different objectives will support and use standards in different ways. Input standards that depict the system as under stress or overloaded may be useful to actors in demonstrating that they are under stress. For those who argue that the system should be doing more to prioritize rehabilitative objectives, input standards can provide an apparently objective basis against which to point to out that little can be done until those standards are met. In a whole range of subtle ways, input standards may be deployed instrumentally by all actors in the system to demonstrate how valiantly they or the system are coping. As one former experienced official put it:

I'm not sure that overcrowding, in reality, really made much difference. It was a great thing to blame for everything. An excellent excuse for why you weren't coming in on budget, doing all the things you were supposed to be doing, and so on. But I'm not sure that in reality it affected life in prisons as much as people claimed. <sup>[#31]</sup>

The strengths of outcome standards lie in the extent to which they are adaptive, in that they leave room to squeeze the system. As later sections illustrate, outcome standards can also incorporate considerable ethical or normative significance, and be regarded by professionals as important 'moral limiters'. They may also provide strong basis for legitimacy to show that the system is operating successfully. Target discourse, as we have seen, is a constituent part of this. Yet, by their nature, these standards tend to leave room for interpretation, distortion, political manipulation, and 'dark arts' in the process of rationalizing whatever levels of capacity can be tolerated as long as the system can be shown to work.

**Table 4.1: Formal targets for crowding in annual reports of the Prison Service and NOMS<sup>55</sup>**

Year	Actual target as written in the annual report	Outturn
1994	Average number of prisoners held three to a cell in accommodation intended for one, to be fewer than in 1993-94, subject ensuring no prisoner is held in police cells unless absolutely unavoidable	0
1995	To ensure that no prisoners are held three to a cell designed for one	0
1996		0
1997	No report available	
1998	Percentage of the prison population above the un-crowded capacity of the estate is no more than 12%	10.0
1999		18.9
2000		17.2
2001	Prisoners held two to a cell designed for one, expressed as a percentage of the average prison population, does not exceed 18%.	17.0
2002		20.4
2003		21.7
2004		21.7
2005	Percentage of the prison population held in accommodation units intended for fewer prisoners did not exceed 24% of the average population	23.7
2006		24.1
2007		24.6
2008	Prisoners held in accommodation units intended for fewer prisoners does not exceed 26% of the average population	25.0
2009		24.0

Source: Prison Service and NOMS annual reports 1994 to 2009.

Looking at targets for crowding levels in the prison system since 1994, we see how input and output aspects are mixed in quite complex ways. As **Table 4.1** shows, targets have been couched as a percentage of prisoners sharing a cell designed for fewer prisoners. At the heart of this is an input-oriented standard which stipulates *ex ante* how many prisoners each cell in the estate should rightfully hold. The target itself however is an outcome standard, in that say for example, 24 per cent of prisoners are in cells designed for less. Also, as this Table suggests, targets have tended to evolve over time as outcomes exceed target levels. Furthermore, although crowding targets have been part of the formal performance management regime, they have not usually been part of the formal assessment process for governors. As one governor explained, ‘overcrowding doesn’t count on my scorecard. I have a weighted scorecard where some things count against me. Overcrowding isn’t scored. It’s a target but it isn’t scored. It’s not something that I could control’.<sup>[#32]</sup>

It is apparent therefore that this standards regime combines different types of standards simultaneously. Different actors may also relate differently to these standards.

Standards will provide structural integrity in the system but will also adapt and evolve with governance arrangements and pressures on the system. To characterize this as a straightforward shift from one type of standard to another may be empirically observable in part, but it also oversimplifies complex and inherently dynamic relationships between the two. In the next section I examine in more detail the two standards used in the prison system – Certified Normal Accommodation (CNA) and Operational Capacity (Op Cap).

## **4.2 Two capacity standards**

During the last thirty years, two standards have defined and shaped capacity in the prison system – Certified Normal Accommodation (CNA) and Operational Capacity (Op Cap). Both have become part of the lexicon of prison policy and management, the former an input-oriented standard and the latter more outcome-oriented linked to operational performance of the prison.<sup>56</sup>

### **a. Certified Normal Accommodation (CNA)**

It's a contradiction in terms. It's normal. It's a misnomer. Certified normal. It would be normal if we didn't have to overcrowd, but we always have to overcrowd. It's sort of legally dishonest. We trot it out. And we don't think about it.<sup>[#33]</sup>

The term Certified Normal Accommodation or ‘CNA’ is a modern articulation of a much older practice of certifying prison accommodation to ensure that it meets basic standards.<sup>57</sup> This practice has been in existence since around the late 1830s (Ruggles-Brise, 1921; McConville, 1981). This period marked the beginnings of attempts by government to standardize and centralize what had been a highly decentralized prison system. The 1839 Prison Act created legislative basis for the development of the ‘separate system’ of prisoner confinement, the principle being that prisoners should be held in single cell accommodation as a means of punishment and encouraging reflection and reform.<sup>58</sup> As part of this provision, legislation stipulated that no cell should be used for such purpose ‘which was not certified to be of such a size, and ventilated, warmed, and fitted up in such a manner as might be required by a due regard to health [...]’ (Ruggles-Brise, 1921, p64).

The struggle to impose greater uniformity on the physical environment of prisons continued throughout the 1840s and 1850s, and with the building of Pentonville prison in 1842, a blueprint for the single cell ‘separate system’ was established (Fox, 1936, p64).<sup>59</sup> The local and regional gaol system tended to resist standardization from the centre (Ruggles-Brise, 1921, p66), however, gradually more formalized Prison Rules began to emerge which set out basic input-oriented standards for prison cellular accommodation. The 1865 Prison Act pushed this along considerably, requiring all cells to be ‘certified by an Inspector of Prisons that they satisfied all the requirements of the [Prison] Rules’ (Ruggles-Brise, 1921, p68). Yet, there remained difficulties for central government in actually being able to enforce these Rules with any great consistency (Hobhouse and Brockway, 1922, p55).

The creation of Prisons Commission in 1877 helped to alleviate these implementation difficulties, as central government through the Home Secretary assumed control and administrative power over local prisons. Cell certification continued to be emphasized as an important part of the Prison Rules. Whereas previously, however, Inspectors had been responsible for certifying cells, the responsibility shifted to the Prison Commissioners, and subsequently in 1963 at the abolition of the Prison Commission, it transferred into the Home Office where it remained until 2007 (then transferring to the Ministry of Justice). From 1877, therefore, responsibility for evaluating and certifying the conditions of prison accommodation has been situated inside the government department responsible for running prisons.<sup>60</sup>

Although the Prison Rules stipulated that every cell should be certified for ‘proper standard of size, construction, heating, lighting ventilation and equipment’ (Fox, 1936, p64), there was no prescribed specification of what constituted a standard cell. (This was largely due to the diversity of physical accommodation in use). The 1949 Prison Rules stated that cell certificates should ‘specify the maximum number of prisoners to be accommodated at any one time in such a room or ward and the number so specified shall be not be exceeded without the authority of the Commissioners’ (SI 1949,11.1). The increase in the prison population from 1945 onwards, however, began to place pressure on prison estate, and this fed into a ‘loosening’ of the doctrines of the separate system and return to the practice of accommodating three prisoners in cells designed for one.<sup>61</sup> The 1949 Prison Rules incorporate this pragmatic flexibility by stating that ‘provided

that where it is necessary for special reasons the Commissioners may authorize the accommodating of not more than three prisoners in a cell' (SI 1949, 11.2).

Throughout the 1950s and 1960s, this practice of tripling prisoners in single cells became widespread in local prisons (Weiler, 1992; O'Friel, 1994b). Prisoners were tripled and not doubled in single cells due to the fear that they would engage in homosexual activity, and this prevalent fear would last well into the 1960s. Weiler (1992) and former Strangeways governor O'Friel (1994b) both highlight the extent to which the move to tripling was seen as a pragmatic necessity, and not something which deserved a great deal of questioning.<sup>62</sup> As O'Friel (1994b) explains, 'the impression given by the reports is that the practice of 'tripling up' was not seen as a policy change but as a temporary expedient. As such it was not to be publicized or questioned. (1994b, p20). Despite this, the prison system continued to certify cells and other units of accommodation in order to specify an 'uncrowded' capacity of the national estate. Indeed, at least since 1949, the Prison Commission and Prison Service have reported annually on 'accommodation available for ordinary prisoners' (SI, 1949) and these data have provided an assessment of uncrowded capacity.

CNA has not changed fundamentally since the early 1980s (PD, 1988; HMPS, 1992a; HMPS, 2001). As **Table 4.2** sets out, it has been a measure of the 'uncrowded' capacity of a prison, 'the number of prisoners that the establishment will hold without overcrowding' (PD, 1988). It is input-oriented in the sense that it is a measure which has defined the number of prisoners which the prison *should* hold given the physical constraints of the accommodation available. The definition itself has been strengthened to incorporate more specific technical criteria (such as ISO standards), and it has evolved to incorporate more qualitative language such as a 'good, decent standard of accommodation' as defined by the Prison Service (HMPS, 2001). Governors and area managers are responsible for certifying uncrowded capacity of all cells and other units of accommodation, and the Prison Service has been responsible for monitoring certification and ensuring that it is up-to-date.

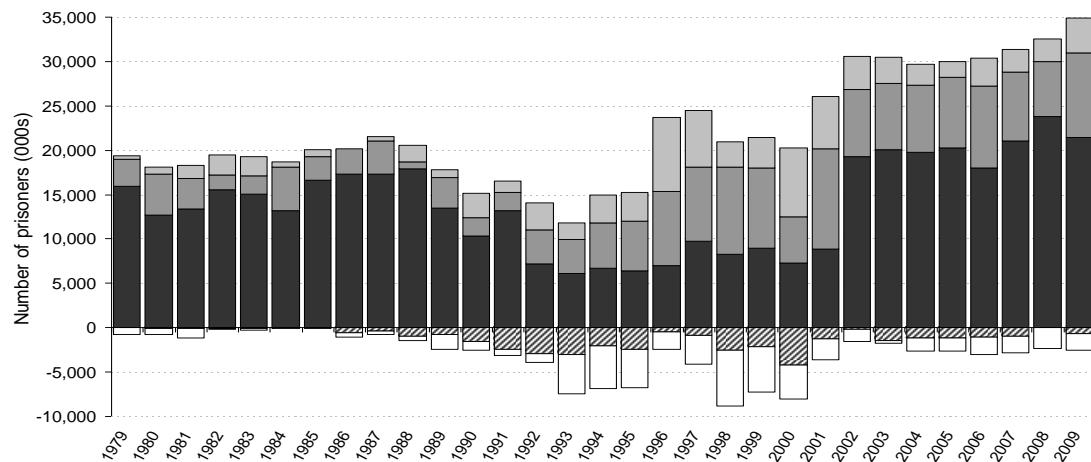
**Table 4.2: Certified Normal Accommodation and Operational Capacity**

	<b>Certified Normal Accommodation (CNA)</b>	<b>Operational Capacity (Op Cap)</b>
Definition	Measure of un-crowded capacity in prison. Represents a ‘good and decent standard of accommodation’	Total number of prisoners that a prison can hold without serious risk to good order, security, and proper running of the planned regime
Type of standard	Input-oriented, but the system has never specified objective input standards (e.g. m <sup>2</sup> per prisoner)	Output and outcome-oriented
Primary focus of the standard	How many prisoners each individual or unit <i>should</i> hold	How many prisoners the whole prison <i>can</i> hold without risk to health, security, or safety
Threshold between	Un-crowded and crowded	Acceptably crowded and unacceptably crowded
Type of judgement involved	Applied to judgements about how many prisoners should live in each cell (lighting, ventilation, heating, equipment etc)	Applied more widely to the quality and capacity of infrastructure and facilities available in the whole prison
Who makes the judgement?	Governors and area managers	Governors and area managers
Level of monitoring and enforcement	Department and Prison Service	Department and Prison Service
Role in resourcing the prison	No specific role	Prison is resourced based on the Op Cap
Legislative basis	The principle of cell certification but no reference to specific CNA	No specific reference to Op Cap
Used since	1980 specifically the term ‘CNA’, but cells have been certified and assigned uncrowded capacity since 1830s.	Early 1990s

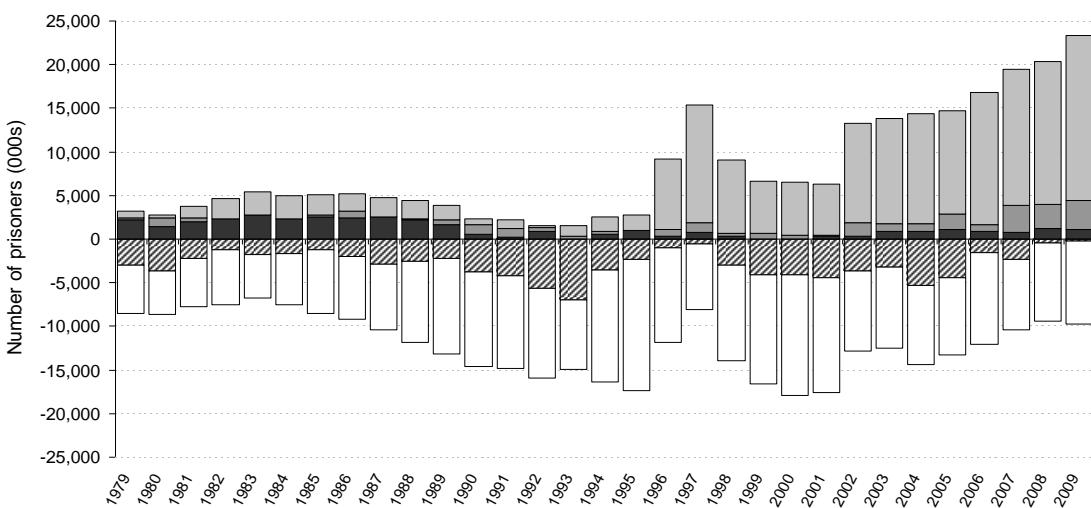
The 1952 Prisons Act is commonly cited as the legislative basis for CNA, stipulating that ‘no cell shall be used for the confinement of a prisoner unless it is certified by an inspector that its size, lighting, heating, ventilation, and fittings are adequate for health [...]’ (Prisons Act 1952, Section 14). For many interviewed it has been a vital basis for regulating and controlling abuses of the system. One former top official summed this up.

CNA comes from the Prisons Act in 1952. We were still coming out of the post-war. Presumably CNA was seen as a proper regulatory framework against genuine acts of indecency. At the heart of that is a genuine intent to regulate what could be a completely corrupt environment. If CNA hadn’t been invented, then would there be something like it now? Absolutely. <sup>[#34]</sup>

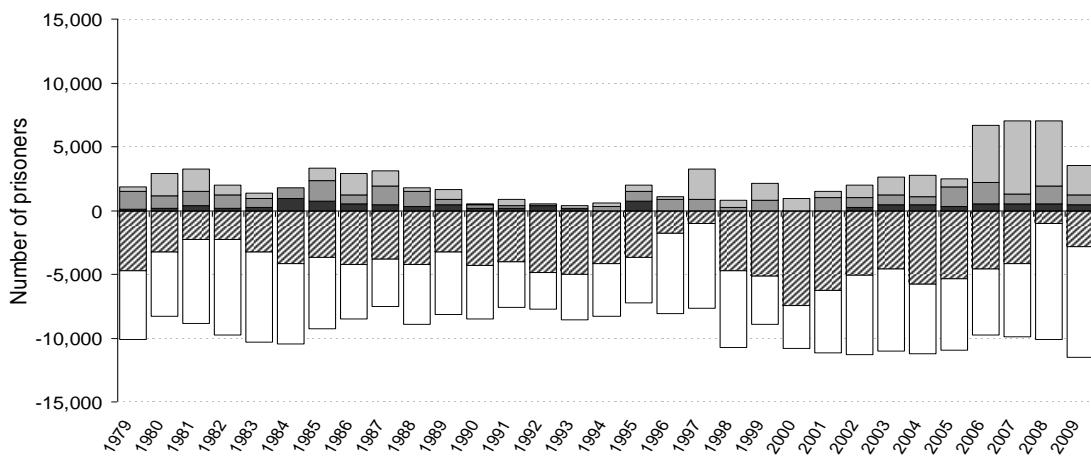
**Figure 4.1: Crowding in local prisons and remand centres, measured against CNA**



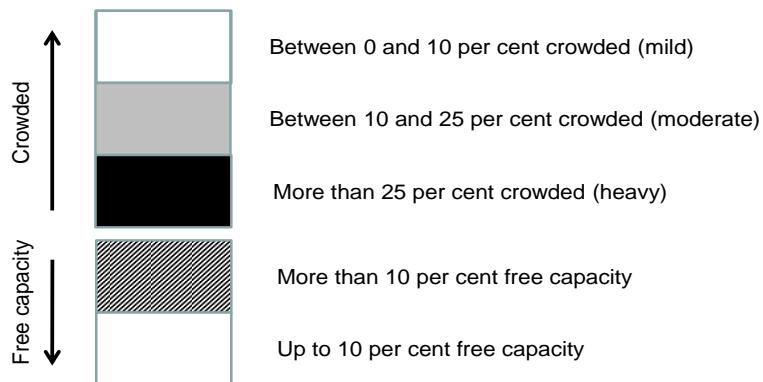
**Figure 4.2: Crowding in adult closed training prisons, measured against CNA**



**Figure 4.3: Crowding in all other types of prisons, measured against CNA**



**Figure 4.4: Legend showing different levels of severity of crowding above CNA**



Although the Act provides legal basis for certification, it does not provide specific objective measures with which to quantify certification. As Weiler (1992) puts it, ‘there has at no time been any statutory provision prescribing standard or minimum measurements for cells’.(p31). Indeed, throughout the 1980s, critics have argued persistently for the introduction of objective metric standards, which could be used to evaluate whether prison accommodation was satisfactory and whether it was improving or deteriorating.<sup>63</sup> Intentions over the years have been expressed by politicians to develop codes of minimum standards but these have generally fallen by the wayside (King and McDermott, 1995, p11). Since the early 1970s, European Standard Minimum Rules for prisons have specified similar input requirements on space and access to facilities, but politicians and senior officials have paid scant attention to these unenforceable guidelines over the years (King and McDermott, 1989). This has led to scathing commentaries by the EU and other international organizations over the years vis-à-vis physical standards in British prisons (Human Rights Watch, 1992).

Although ‘capacity clauses’ in legislation have been recommended over the years, they too have never been enacted. The most prominent example over the years came after the 1990 Strangeways riots, as part of the recommendations made in the Woolf report (HO, 1991a). The only recommendation of twelve that was not accepted by the government was to introduce a limit on capacity of prisons at no more than 3 per cent above their CNA.<sup>64</sup> In instances where prisons went above CNA for a specific length of time, ministers would be required to appear in Parliament to provide reasons

why, and give assurance as to when these overloaded prisons would be returned to uncrowded levels. Introducing legislative protection for an input measure of this kind was seen widely as a hostage to fortune for the government and Home Secretary.

Based on publicly reported CNA data, it is possible to calculate levels of crowding above CNA. For each type of prison, **Figures 4.1 to 4.3** show the number of prisoners held in prisons which are at different levels of crowding or under-population. Bars above the x-axis show the number of prisoners in prisons crowded above CNA, and bars below show the number of prisoners in prisons which have free capacity under CNA. The different bands in each of the bars represent different thresholds of crowding or free capacity in individual prisons (see **Figure 4.4**). Darker shaded bars congregate around the horizontal axis, and show more intense levels of crowding or free capacity.

Historically, local prisons and remand centres have carried the burden of crowding in the system. Figures 3.5 and 3.10 have already shown how the problem of crowding is still very much in the system in the 2000s, despite the fact that the worst excesses of crowding prisoners three or more to a single cell have all but disappeared. The practice of doubling prisoners in single cells has become commonplace across the local prison estate, and this accounts for a level of crowding in the late 2000s, which looks equivalent, quantitatively if not qualitatively, to crowding levels in the 1980s. Closed training prisons and other types of prisons have by design been protected from crowding, as these establishments have tended to accommodate longer term prisoners. As the data shows, however, pressure on the system since the beginning of the 2000s has meant that closed training have started to tip above CNA.

### b. Operational Capacity (Op Cap)

In the months following the prison disturbances at Strangeways, politicians and senior officials began to think more seriously about the need for more rigorous standards governing capacity in the prison system.<sup>65</sup> For many years prior, the system had coped with levels of crowding way above CNA, and as many interviewees have acknowledged, the Strangeways riots were a major and very public shock to the system, and marked a turning point in the way the system thought about and operationalized standards of decency and order. As one former official put it, ‘it taught the system a lesson about how far you can push people’.<sup>[#35]</sup> Another senior official reflected:

[Strangeways] was the major catalyst. The Service was floating around being managed by civil servants without too much of a direct operational focus. The Strangeways riots followed by Bristol and Dartmoor, highlighted the paucity of our response. It exposed the paucity of our regimes in local prisons.<sup>[#36]</sup>

By Spring 1992, the Prison Service had developed a code of standards for all its activities, a large part of which addressed the problems of crowding and the need for some kind of ceiling limit on what local prisons could be expected to take (HMPS, 1992b). As **Table 4.3** shows, the actual population of most large locals had been well above CNA for many decades, and CNA had not provided any kind of effective capacity ceiling for the system.

This breach of CNA was entirely normalized. As one former experienced governor explained, ‘in the 1980s CNA wasn’t something that we considered. You just knew that you were in a very overcrowded prison. You didn’t see it in the light of being 65 per cent overcrowded, or breaching some guideline or whatever’.<sup>[#37]</sup> This governor went to describe a period of reflection and more intensive thinking about conditions, justice and fairness in the prison, in the period between Strangeways, Woolf, and the publication of the white paper *Custody, Care and Justice* (HO, 1991b). He continues:

So we became principled in that we said we won’t hold more prisons than which the cell was designed for. We’ll get rid of tripling. And we got rid of that. And it became about certification of single and double cells. That period, 1989 through 1992, was a highly intense period of that.<sup>[#38]</sup>

**Table 4.3: Percentage crowding in major urban local prisons, 1979 to 2009**<sup>66</sup>

Average percentage crowding above normal accommodation (Three year averages from year listed)										
	1979	1982	1985	1988	1991	1994	1997	2000	2003	2006
<i>Male adult locals</i>										
Durham	42	40	52	51	61	51	36	15	19	59
Leeds	86	94	102	86	40	21	26	57	52	39
Manchester	60	53	60	8	-6	12	19	24	29	28
Liverpool	48	38	46	36	31	15	18	15	18	16
Birmingham	77	82	86	74	48	40	45	31	26	29
Pentonville	20	38	45	27	9	21	23	28	31	30
Wormwood Scrubs	24	19	29	10	32	14	-8	-15	5	7
Brixton	48	48	42	45	25	22	11	17	32	31
Wandsworth	16	11	20	19	7	4	8	19	30	41

**Source:** My analysis of data from Prison Service and NOMS annual reports. Positive figures denote percentage crowding above CNA and negative figures denote free capacity below CNA.

During this period, the Prison Service introduced Operational Capacity (Op Cap) into its official guidance for governors (HMPS, 1992a). Op Cap was defined as ‘the total number of prisoners that an establishment *can* hold without serious risk to good order, security, and proper running of the planned regime’ (HMPS, 2001) (my italics). Its introduction was part of a plan to ‘set out revised procedures for certification of inmate accommodation’ (p1), and a measure of ‘authorized capacity of the establishment’. It would legitimate an acceptable degree of crowding above CNA. Whereas CNA was a standard which distinguished between states of crowded and uncrowded, Op Cap was a measure which distinguished between acceptably and unacceptably crowded.

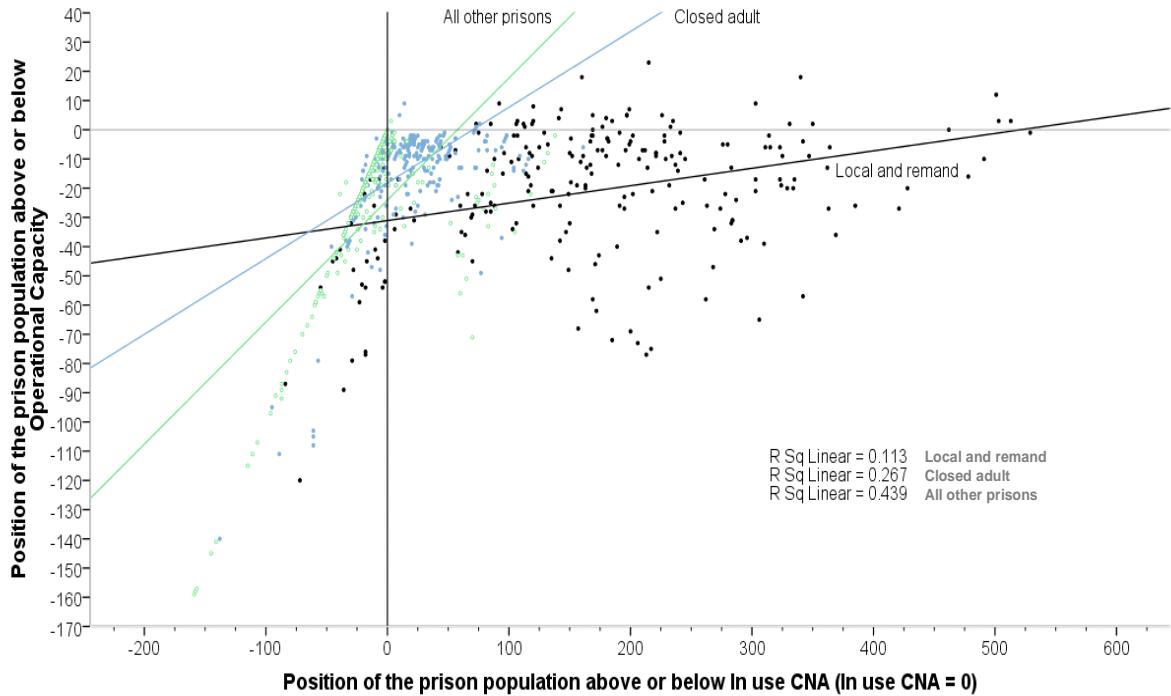
Op Cap hinged on a professional judgement, an agreement between the area manager and the governor about where the upper limit should be set based on a range of factors including infrastructure and facilities available, and what the prison could reasonably be expected to hold given the prevailing population pressures. In theory, the prison would be resourced to meet Op Cap (not CNA). Op Cap therefore turned the input-oriented CNA on its head. Whereas CNA was a measure of what a prison *should*

hold, based on an aggregated total of the certified space in each individual cell or unit, Op Cap was an outcome measure based on a judgement about what the prison *could* hold. Rather than starting with individual cells and working up to a capacity total for the whole prison, Op Cap involved retro-rationalization of what individual cells could be expected to hold given this judgement about the available capacity in the prison as a whole.

Op Cap could not therefore be separated conceptually from the performance of the prison. The consequence of this is that it leaves large scope for interpretation about what is ‘acceptable’ performance and what level of capacity is required for that. Whereas CNA specifies this from the start, Op Cap is the capacity standard you get at the end of the process as a by-product of establishing the operational equilibrium of the prison. As the next section below discusses, these decisions are subject to a wide range of managerial, political, financial, and cultural pressures. They also leave considerable scope for incremental re-adjustments in capacity – normalization of deviance - the marginal effects of which may be relatively easy to justify and absorb into the existing operations of the prison.

**Figure 4.5** charts the differential between the average annual prison population and CNA (on the horizontal axis), and the same differential between the average annual prison population and Op Cap (on the vertical axis). The higher the positive value of points on each axis, the more the prison population has stretched away from the respective standard. In the local prison estate, the majority of local prisons have maintained Op Cap at somewhere between 100 and 400 places above CNA, while most local prisons operate at levels between 1 and 40 places below Op Cap.

**Figure 4.5: The relationship between average CNA, Op Cap, and the prison population in all prisons, since 2004**<sup>67</sup>



Source: NOMS website. This chart is based on over 700 data points for annual average figures of population, CAN, and Op Cap, between 2004 and 2009.

**Table 4.4: Extent to which Op Cap stretches away from CNA, 2004 to 2009**

	2004	2005	2006	2007	2008	2009
Headroom between Op Cap and prison population	1,200	1,140	980	690	840	na
Extent to which Op Cap increases independently of CNA	200	330	390	130	380	na

Source: NOMS data on CNA and Op Cap. Data for 2009 not available.

**Table 4.4** shows that Op Cap has tended to stretch independently of CNA by anywhere between 130 to 390 places per year since 2004 (the first year for which Op Cap data are publicly available). Closed training prisons have traditionally been protected from population pressures over the years, and therefore tend to show a closer relationship between CNA and Op Cap. As we have seen above, however, in recent years training prisons have crept over CNA, and Op Cap has stretched marginally to accommodate this

increase. An extract from the 2006 Prison Service annual report corroborates these estimates:

Operational Capacity increased by 767 places during 2006-2007, partly as a result of 300 new CNA places being provided through newly constructed house blocks [...] but partly too as a result of agreed increases to overcrowding (*i.e.* increases in Operational Capacity) at specific establishments. [HMPS, 2006, p16]

All other prisons, semi-open and open, show a relatively close relationship between CNA and Op Cap, suggesting that population pressures in this part of the estate have never necessitated stretching in Op Cap.

It is clear from the data that Op Cap can be shown to stretch when under pressure from increments in demand. As relatively small increments every so often, these may be easily rationalized and absorbed. Although Op Cap can be seen as a meaningful upper limit to prison capacity, many interviewees have been sceptical about integrity of the measure. More sceptical senior officials interviewed were inclined to see Op Cap as much as a bureaucratic innovation to ‘define away’ the problem of crowding as a measure to set a limit on what the system could be expected to absorb.

This is all the product of highly imaginative and creative civil servants who have drafted the way out for ministers on some pretty tricky issues. It is a device.<sup>[#39]</sup>

In the early nineties, with the increase in population, the problem was dealt with by a new term Operational Capacity...which means how many can you squeeze in without breaching health and safety <sup>[#40]</sup>

It is difficult to second-guess motives of officials in this respect. This is particularly so as it has not been possible to trace the exact origins of Op Cap during this period (the first formal mention I found was in Prison Service Instruction 19 (HMPS, 1992a)), despite extensive interviewing with officials who were closely involved during that time. It is however worth pointing out that the level of crowding during 1992 was almost at its lowest point throughout the whole thirty year period. Furthermore, the publication of the *Custody, Care and Justice* White Paper in 1991 had captured a sense of optimism in the prison system on the back of the Woolf agenda for change (HO, 1991b). These two factors suggest that there would not have been great pressure on Ministers or senior officials to invent devious ways of redefining or repackaging the crowding problem.

Indeed, as many interviewees have reflected, the crowding problem was beginning to be seen at that time as part of a bygone era.

By the late 1990s, however, the rapid and largely unpredicted increase in the prison population meant that much of this optimism about the system returning to CNA had dissipated. Senior officials had begun to work on the basis that CNA had become a redundant standard, at least for the local prison estate. One former top prison official confirmed as much.

At some point during the Labour period and Martin Narey's period, it became accepted that we were no longer going for the un-crowded estate. We accepted that overcrowding was permanent and endemic. I can't spot the point where that happened exactly, and I was very near to it all. <sup>[#41]</sup>

Both CNA and Op Cap continued to be used and reported as official standards of capacity and crowding. However, Op Cap became an important device for maintaining flexibility in the system during this time of population increase and for rationalizing and legitimating stretch. The Prison Service, and latterly NOMS, continued to publish CNA figures for individual prisons on a regular basis. Against this, Op Cap has been used as a pragmatic threshold of acceptable levels of crowding above CNA. I now examine in more detail the varying perceptions of standards, their strengths and weaknesses.

### **4.3 Perceptions of how these two standards have performed**

CNA has long been, and continues to be, the baseline convention for assessing the extent of crowding. Prison reform charities, the press and media, and many officials and professionals working in the system, have long sustained CNA as the ideal-type standard. Officials interviewed have often seen it as an unambiguous, even 'quasi-scientific' concept, <sup>[#42]</sup> based on a judgement about the number of prisoners a cell is designed to hold given specific technical and environmental guidelines. As one current governor of a large local prison put it:

[CNA] does not feel very ambiguous...as a governor. And crowding means the number of prisoners that are required to live in accommodation that is not designed for that number of prisoners. It's pretty simple really. <sup>[#43]</sup>

For many decades, leading campaigning groups such as the Prison Reform Trust and the Howard League have used CNA as the sole benchmark for prison crowding, with little or no reference to Op Cap at all. Many governors and officials had sympathy with this approach in principle. As one suggested, ‘CNA still needs to be there. That is the true capacity...the un-crowded capacity of the jail. Everything above CNA is overcrowded. I would get very anxious if the centre stopped reporting the fact that we are holding two prisoners in a cell designed for one. If the cell is designed for one, it should have one’.<sup>[#44]</sup>

The question remains, however, how long a public policy standard can fail to be adhered to before it is declared obsolete as a meaningful standard. As many senior officials and governors have pointed out, in policy and operational terms, CNA has become an obsolete concept, which holds little relevance for prisons policy or operation. As one experienced governor put it:

I don’t think there is anyone anywhere who is working on how to end overcrowding. It is not a real policy issue. None of those projections which get published in annual reports say anywhere how CNA is going to meet demand. It is working assumption that is never spoken of.<sup>[#45]</sup>

In discussions with governors and staff, CNA was commonly seen as something which had little or no direct bearing on the day-to-day resourcing and operations of the prison. Rarely did governors not know what their CNA was when asked, but many confessed to having to go and look it up in preparation for the interview. A former senior official with experience in population management explained that he ‘never ever referred to CNA’ during his time.<sup>[#46]</sup> In interviews with private sector prison directors, the concept also seemed a distant concern. It was really only the fact that most private sector directors had come from the public sector that a conversation about CNA was possible at all.

We might therefore ask how and why this standard has stood the test of time. If, as the quotations above suggest, civil servants have been so adept at the ‘dark arts’ of defining away problems, why have they not applied these skills to defining away crowding by formalizing this widely acknowledged view that CNA is an obsolete standard. After all, in most local prisons, the principle of ‘doubling up’ with a bunk-bed and a screened-off WC has become so commonplace, that it would in theory be relatively easy to make a case that the new ‘normal’ accommodation in local prison

involved sharing a bunked cell with another inmate. Despite seeing the logic in this, many interviewees were sceptical that it would ever happen. Who would have incentive to push for it after all? As one governor put it:

They dare not change it because of the row. All ministers will be advised that you can't change this without a god-almighty row. With the PRT, Ramsbotham<sup>68</sup>, questions in the Lords and in the House, the Home Secretary or Justice Secretary painted as a monster.<sup>[#47]</sup>

In fact, as many interviewees have also suggested, maintaining CNA as a measure of crowding allows Ministers to point to overload of the prison system and implicate the judiciary in attempts to reduce the level of demand. As one former governor and senior member of the Inspectorate put it:

Don't you think that that is the game being played? Actually most people want to reduce the number of people in prison. They can't come out and say it, because it looks as though they are treading on court territory. Which they have no right to do, and will be challenged in parliament by the opposition. So all the time, what they are saying is, look at the state of our prisons, we've still got massively more people in our prisons than we ought to have. Look at what the CNA is! That is about as far as people like Jack Straw are prepared to go in saying we have too many people in prison.<sup>[#48]</sup>

Many also agreed with the idea that CNA has in fact provided senior officials, governors, staff, and unions with a device to show how the system has operated successfully and valiantly under a perpetual demand-side pressure. One former Treasury official provided an eloquent summary.

It enables the NGOs to castigate government for not having a proper sentencing policy to keep the population at a sensible level. It enables the government to say 'oh gosh, we are trying to deal with all these prisoners'. It also enables ministers to say 'really, judges, will you please stop sending all these people to prison'. And it enables governors to say 'aren't I doing a tremendous job, packing in all these prisoners'. So that is absolutely true, everybody gains from it. There isn't anybody who would be arguing for getting rid of it, other than a mythical person who would be saying 'let's have a bit of honesty rather than this deception that goes on'.<sup>[#49]</sup>

I turn now to look at perceptions of Op Cap. Discussions with senior prison officials have emphasized the importance of having sufficient flexibility in the system in order to be able to manage the population, as well as meeting other political and strategic objectives. As one former top official pointed out, 'when you are having to manage the

whole system, your public policy imperative is always going to be want to remain flexible. You constantly have to be looking at the options for what part of the system you can flex to be able to respond to new pressures'.<sup>[#50]</sup> One of these options is to be able to flex capacity standards. The invention of Op Cap has undoubtedly given this process of flexing a degree of legitimacy. The process, however, incorporates complex dynamics of recognizing the value of rules and principles, yet also rationalizing increments of change to these rules over time. One former top senior official gave a candid account of this dynamic.

Once you've made that rule and you know that you are going to break it, the next thing is to try to create that set of external rules, the next layer of the onion. What rule, which isn't quite so hard and fast, would we be able to adhere to? You wrap around these concentric circles of regulation. That's why Op Cap is such a different debate from CNA. The problem comes in the bureaucracy of the system. CNA at 200, Op Cap at 300...that's all fine. You then have to specify where that increased capacity is going to impact on each individual box in the prison.<sup>[#51]</sup>

Governors, area managers, and senior officials all confirmed that finding ways to stretch Op Cap had been a vital tool for coping throughout periods of population pressure. As one former Prisons Minister put it, 'we don't work to CNA, we work to Op Cap. We stretch Op Cap. And the definitions change sometimes when you are under real severe pressure'.<sup>[#52]</sup> Senior officials interviewed described the kinds of incremental pressure which they would exert on governors to find extra capacity. This pressure would be channelled through the line management hierarchy of area managers. A current NOMS official described the constant squeezing of the system.

Systematically, as we ran that system, we went back to governors and said...20? Is that your best offer? Why isn't it 22? Why isn't it 25? When you are talking about Op Cap, it is almost impossible to draw the line. You can always say, oh couldn't you have one more?<sup>[#53]</sup>

Despite this general view that Op Cap has tended to stretch, it is interesting that governors in particular expressed strong views about the integrity of Op Cap as a standard. Hardly any governors talked of having to transgress Op Cap, except possibly in cases of very short-term breaches in cases of 'lock-outs' from other prisons and late-night phone requests from area managers to governors asking them to receive prisoners temporarily. Strong professional-ethical standards came into play here, as governors

talked about their role in making sure that their prisons were safe and that they did not put their staff under undue pressure. This echoes what Hood et al. (2004) refer to as control through ‘mutuality’ - professional ethical standards which are culturally important in the way in which governors rationalize their own role in protecting their establishments, staff and prisoners.

Governors were aware of the pressure from above to make capacity available. They were also aware of their responsibility as civil servants in a line management structure to do their best in terms of freeing up capacity during times of population spikes. An agreement between governors and area managers would be reached in the context of the situation, and this would depend to a large extent on the nature of the personalities involved and the criticality of the situation. Nevertheless, many governors have described instances during their careers when population pressures have led to them having to accept increments in population.

Anything can actually be justified. The new unit I opened was meant to be 180. And I was told by the area manager, can you find some overcrowding in there? I said no. He said, well let's have a look. And he said, well let's double this landing. So we went from 180 to 210. There was no assessment of the risk produced for me as a governor. It was just that we will have 30 extra prisoners in there. The question always comes. Could you find some more overcrowding?<sup>[#54]</sup>

Many governors talked frankly about the potential career-limiting effects of resisting pressures from area managers. Older and more experienced governors tended to see themselves as more resistant to pressure from above, willing to say no to requests from the centre which they deemed unreasonable. One local prison governor explained the considerations involved in refusing to fill a bus with prisoners on overcrowding drafts. ‘I declined to fill the 10. I do that more than my predecessor did. I’m a fairly senior governor. I’ve been governing jails since the late nineties. I know how to play the game. I’ve also got no career aspirations’.<sup>[#55]</sup> Often governors talked about putting in requests to decommission accommodation which was dilapidated or considered unusable. They talked of such requests being denied, particularly during times of population pressure, and in certain instances, perceived resistance as damaging to their career prospects. As one governor put it:

I closed a wing at a time of great capacity stress. I said it was unfit for human habitation. And I would not back down from that. There was a huge amount of pressure to say that the facilities, with a bit of extra work, would be habitable [...] I knew that the moment I left the prison, they would nobble a new governor, and it would go back into operation, and surprise, surprise, that is exactly what happened'.<sup>[#56]</sup>

Despite this strong command-and-control dynamic, governors also suggested that over the years, there have been clear incentives for them to find ways of stretching Op Cap. Receiving more prisoners was cited commonly as a strategy to secure extra financial resources for the prison, which could then be channelled elsewhere to make up shortfalls in the budget or boost provision of programmes and other services. Particularly in local prisons, taking another ten or twenty prisoners meant doubling up ten or twenty single cells, and often the marginal impacts of this kind of increase could be absorbed within the existing regime. Commonly, it would come with new 'per prisoner' payments, which might not necessarily require an increment in staff cover. As one governor said:

Crowding for us was an advantage. There was a unit in HQ and if you went and said you could provide fifty extra places, they would say how much money do you want? And with that money you paid for the same staff that you were cutting from the budget.<sup>[#57]</sup>

Areas managers occasionally suggested that they would have to rein in their own governors from being too exuberant in offering up too much capacity and stretching Op Cap too far. In the last few years, governors and senior officials suggest that these financial incentives to find extra crowding have not been as readily available, as the centre has become more knowledgeable about real unit costs involved and as financial resources have become more tightly allocated.

We have seen therefore that both CNA and Op Cap have incorporated strengths and weaknesses over the years. Each one has been originated for specific purposes and they are both quite different in the principles they embody and in the role they play. Independently, however, neither one nor the other can be said to be sufficient to provide structural integrity in the system and at the same time respond to changes in external environment, not least the rising prison population. It is in the relationship between the two standards, a form of control through counterbalance that the basis for structural integrity is found. I now turn to this relationship.

#### 4.4 Control through counterbalance between standards

It is the relationship between CNA and Op Cap which has been the foundation for standards in prison capacity in recent decades. CNA still constitutes a meaningful moral capacity standard, and according to many, it is still a relevant and desirable standard for the long-term planning of the estate.<sup>[#58]</sup> It is still, to use a term which has surfaced frequently in interviews, the ‘gold standard’, even if most local prisons have not been close to it for most of the last fifty years. Op Cap, on the other hand, regulates the elasticity of stretch away from this baseline, and is subject to a mix of different considerations, pragmatic and professional, about whether this stretching is safe or secure. As one former Prisons Minister put it, the relationship between the two ‘tells me how much a prison is going to be focused on movement [of prisoners] and security, as opposed to the other functions that it should be discharging’.<sup>[#59]</sup>

Discussions with senior officials have shown how this counterbalance has become strongly conventionalized in the way in the system. To echo discussions in the first chapter, it has become a cultural artefact of the system. One senior NOMS official explained the semantic distinction between the terms ‘crowding’ and ‘*overcrowding*’.

‘There is no *overcrowding*. It is *crowding*. We don’t have *overcrowding*. We have crowding against our measure, which we have developed. It’s our measure. It’s not an external measure [my italics to show emphasis of the interviewee].’<sup>[#60]</sup> In clarifying this point further, this NOMS official gave the following explanation.

*NOMS official*: Overcrowding would occur, for example, in an establishment when you had more prisoners than its evaluated Operational Capacity

*Me*: So anything greater than Operational Capacity would imply overcrowding?

*NOMS official*: Yes. But that materially does not happen. Except in exceptional cases where for example the Op Cap may be exceeded on a single night under extreme pressure.

As we have seen, however, Op Cap does and has stretched over the years, a fact which gives the lie to the argument that Op Cap is only very rarely transgressed. This may be the case, but if it can be shown that Op Cap stretches every so often, there is little need for it to be transgressed. This is a process which can appear invisible to the human eye,

as transgression is always assessed against moving thresholds and usually stretching has taken place during a previous governor's watch.

The effectiveness of the counterbalance standard lies in its ability to offer different things to different groups at the same time. As senior officials have pointed out, CNA has predominantly been a capacity figure for public consumption (indeed, it may be a reflection of the general level of interest of the public in prison conditions that an obsolete standard has sustained so long without challenge!). Op Cap, on the other hand, has been a management figure for internal consumption for those responsible for running the system. By maintaining CNA, the moral ethical and principled dimension is retained. By deploying Op Cap, operators are able to maintain both the professional ethical and pragmatic dimension.

Looked at in the round, the overall effect seems compelling. Indeed, a report by the UK National Audit Office in 2005 on the management of the increase in the prison population reported that 'our analysis of the data since 1993 shows that the increase in the average prison population since 1994 has led to the overall number of people in custody exceeding the certified accommodation available each year, although the estate has kept within its operating capacity' (NAO, 2005, p10). Even the NAO, it seems, are willing to accept that the prison system can sustain a state of being overcrowded, yet at the same time, sufficiently uncrowded.

As chapter 8 discusses, contracts with private sector prison operators have perpetuated this relational standard albeit in a more legally-specified manner. Private sector contracts talk in terms of contractually specified number of prisoner places to be made available, plus option to crowd in increments usually up to 30 per cent. Typically, these optional increments incur extra payments from government to the contractor. Over the years the public sector have experimented with Service Level Agreements (SLA) between prisons and the commissioning centre, designed to emulate commercial contractual approaches. SLAs have commonly been used as a result of market testing, such as the Manchester prison market test after the riots in 1990. This approach gives governors some degree of predictability over a three-year budgetary period about the number of prisoner places that they are obliged to make available.<sup>[#61]</sup> Many argued that in reality these SLAs would be vulnerable to old-fashioned command-and-control

requests from the centre to take more prisoners. One senior NOMS official explained the brutal truth of the matter:

Be under no illusion that if I were told to put an extra 50 prisoners into Manchester tomorrow, they'd be going into Manchester tomorrow. No ifs and no buts. Unless you made it a crime. Legally, it's pretty straightforward. Can I do it? Yes. Decency? Well, yes. Bit more of a grey concept in the middle. But if I really need to put 50 prisoners in tomorrow, they would be going in tomorrow.<sup>[#62]</sup>

The combination of the demand-led environment of prison, and the pragmatic command-and-control cultures which have existed in recent decades, tends to work counter to attempts to establish hard-and-fast input standards for prison capacity, or indeed, attempts to emulate more legal-commercial approaches.

## 4.5 Conclusions

The account of the evolution of CNA and Op Cap in this chapter has shown a much more complex and nuanced picture than just a simple shift *ex ante* to *ex post*, or input-oriented to outcome-oriented, modes of standard. We have seen how both standards have emerged in different ways and for different reasons. We have also seen how both standards incorporate weaknesses and strengths, which mean that independently they are inadequate to protect the system from excessive capacity stress. As a means of control through counterbalance however, both measures have provided an acceptable and workable equilibrium between integrity and flexibility, and one which has something to offer different interests in different ways.

CNA has now for decades played the role of principled standard for uncrowded capacity. Yet there are clear questions about the extent to which this is still relevant in a modern-day prison system. CNA has been inadequate as an input standard to protect local prisons against excessive demands of population. In terms of the problematic, it is a clear illustration that the system can sustain obsolescence despite widespread acknowledgment of the fact. As interviewees have pointed out, there is much inherent resistance in the system to getting rid of it as a standard, both for the reason that in many people's minds it retains a moral importance, and for the reason that it allows actors to perpetuate the view that the system is under stress and to demonstrate the value of their own efforts in coping with this. In this way, direct and benign resistance to modernizing

CNA have sustained this obsolescence, as well as ensure insufficient incentives for actors to make moves to reform or modernize it.

Another aspect of CNA is that it has provided inadequate structural integrity to the system as a principle underpinning rehabilitative goals, and to protect the system sufficiently to be able to focus on these goals. This highlights the fact that it is difficult if not impossible to say with any certainty what kind of input standard would be necessary for prisons to be able to focus more proactively on achieving rehabilitative outcomes. It has not been possible find research done on what levels of capacity are necessary in this sense, perhaps because it is an impossible metric or algorithm to compute. As many interviewees have pointed out, eradicating crowding is not necessarily the panacea for the ills of the prison system. As the previous chapter has shown, there are signs that the system can improve despite increased levels of crowding. In essence, therefore, we see an apparent dislocation between guiding principles about the role of prison in society and the specific input standards which may be necessary to achieve this.

Op Cap can be seen as the managerialist response to the inadequacies of CNA. There is much in Op Cap which reflects strong ethical and professional conscience. For professionals working in the system, it has provided a device or mechanism for rationalizing what is and what is not acceptable, and doing so in a context which, by necessity, has been driven by the need for pragmatism and flexibility. As the problematic suggests, Op Cap has been a device for normalizing deviance away from what is 'normal'. This in turn has played a major role in shaping and sustaining the culture of coping and crisis.

Indeed, Op Cap is the device which has complemented managerialist change. As we have seen, it has been malleable in the context of increasingly centralized and coordinated line management. It has allowed stretch to take place in ways invisible to the eye and in ways which have been continually rationale and justifiable in the context of a system under pressure. As an outcome-oriented target too, it has been continually redefinable in terms of what outcomes in the system are tolerable or acceptable at any particular point in time. And it has provided all of these actors in the system with a basis for legitimizing crowding and capacity stress.

A safe level of overcrowding? As if there is a safe level of overcrowding. At what level does it become unsafe? Nobody actually knows. We only know that it gets

unsafe because something goes wrong. And then we go, oh dear. Didn't do that well, did we? That's where we are in the Service. We've not had disorder on a wide scale for years. So we think that we can edge it forward, keep pushing it up.<sup>[#63]</sup>

In the next four chapters, there is a change in emphasis from managerialist themes relating to the system as a whole, to specific perspectives of key groups of actors in the system. I turn to look at how different actors view, shape, and respond to chronic conditions of crowding and CCS. I have argued in the opening chapter that in order to understand the predicaments and behaviours of individual actors in the prison system, we need to see them as part of a system working dynamically as a whole. The corollary to this is that in order to understand the whole, it is necessary to 'atomize' the parts and understand the system as the dynamic outcome of interactions between constituent groups of actors. The next four chapters now shift the focus onto these distinct groups; respectively, senior ministers (chapter 5), top officials (chapter 6), prison governors and staff (chapter 7), and private sector prison operators (chapter 8).

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<sup>53</sup> Former prison governor and senior official <sup>[#30]</sup>

<sup>54</sup> Scharpf (1999) distinguishes between 'input-oriented' and 'output-oriented' legitimization. In their analysis of regulatory and control mechanisms in public policy systems, Hood et al. (2004) identify a similar shift from inputs to outputs, from 'emphasis on detailed *ex ante* authorization to *ex post* appraisal and audit of activity and performance against general guidelines and principles' (p194).

<sup>55</sup> Data for percentage overcrowding in this table contains discrepancy with the data in Figure 3.5. Although the trajectory of the data in this table and the '% held 2 in a cell designed for 1' and '% held in a cell designed for less' between 1999 and 2009 is broadly similar, absolute percentages in the graph are marginally higher than percentages in this table. The reason for this discrepancy is not known. Both sets of data are sourced directly from Prison Service or NOMS.

<sup>56</sup> CNA and Op Cap have evolved sub-concepts over the years, for example, CNA has developed into more specific variations such as 'In-use CNA' or 'Baseline CNA', but for the purpose of this analysis, they are discussed in their generic form.

<sup>57</sup> The actual term appears to have been introduced around the end of the 1970s, with first specific mention in official documentation in the 1980 Prison Department annual report. It appears for the first time on page 3 of this report. But it may be that the specific term was in use prior to this first official mention.

<sup>58</sup> The 'separate system' won the strong approval of the Grey Committee of 1850, who thought it 'more efficient than any other system which had yet been tried, both in deterring from crime and in promoting reformation. In the years that followed the system was more and more widely adopted (McConville, 1981, p351).

<sup>60</sup> A former senior official in the Prisons Inspectorate reflected on the disagreement about the constitutional status of the Prison Inspectorate between Lord Justice May and Robert Armstrong after publication of the 1979 May Inquiry. He points out, 'one of the reasons why May was introduced was that people were suspicious of self-regulation, which is what happened as a result of Du Cane abolishing the independent inspectorate [in 1877]. There was a tremendous row that went on between May and Robert Armstrong, who obfuscates the whole thing and tries to argue that it would be totally improper for anyone to try to criticize the civil servant from outside. May says no, it's got to be independent, and the Chief Inspector has got to be independent of the whole service'. <sup>[#64]</sup> The Inspectorate nevertheless remained

part of the Home Office, and the Chief Inspector has reported to the Home Secretary.

<sup>61</sup> McConvile (1981) identifies localized crowding in urban prisons throughout the nineteenth century. He writes about a period circa 1857, 'even when the authorities enlarged their prisons, committals overtook the new capacity, and as at Liverpool prison, instead of being separated as was intended, prisoners were, within a couple of years, once more sleeping three to a cell' (p365). Fox (1952) explains how the separate system in England was slowly and gradually eroded due to increased prison population in the post-war years. He writes that the 'breach is due simply to overcrowding: before the war there had always been cells enough for all-comers, but post-war pressure on the available accommodation has led first, to the creation inside the prisons of small dormitories in whatever rooms could be made available, and next to the regrettable necessity, in the majority of local prisons of sleeping a proportion of prisoners three in a cell' (p104).

<sup>62</sup> Weiler (1992) has written on the extent to which 'tripling' was normalized and widespread throughout the prison system at the start of the 1960s. He states that 'there was no formal consideration by the Prisons Board, no Ministerial statement, no Parliamentary or press interest, and no comprehensive instructions to the Prison Service. Nor could I even establish the precise date on which the first location of three men in a cell took place. There was certainly no appreciation that this regrettable deterioration in prison conditions would be a long term one'.(p24). He observes that 'there had been no relevant comment in the extracts from governors' annual reports since 1952. It is not unreasonable to infer that the service and headquarters had come to accept 3-in as a normal and inevitable feature of post war life (p40).

<sup>63</sup> Research by Casale and Plotnikoff throughout the 1980s has highlighted the resistance at ministerial and senior official level to developing objectifiable minimum standards for prison capacity. See PRT, 1986 and 1993b; Casale and Plotnikoff, 1989 and 1990; King and McDermott, 1989; Stern, 1989; and Casale, 1994.

<sup>64</sup> 'A new Prison Rule that no establishments should hold more prisoners than is provided for in certified normal level of accommodation, with provisions for Parliament to be informed if exceptionally there is to be material departure' +/- 3 per cent for more than 7 days in a period of any 3 months' (Woolf, 2008, p247).

<sup>65</sup> The call for more defined codes of standards was strongly made in the report by Lord Justice Woolf and Judge Tumin (HO, 1991a), and this was followed by the creation of working group in the Prison Service to develop a Code of Standards (HMPS, 1992a).

<sup>66</sup> The data were based on my own analysis of prison population and CNA figures for year 1979 to 2009 from Prison Service and NOMS annual reports. Percentage overcrowding figures were calculated for each year, and then the thirty year series was median smoothed. Three year averages were calculated from the year listed. For example, for 1979, I took the mean average of smoothed data for years 1979, 1980, and 1981.

<sup>67</sup> Data on Op Cap has been collected centrally by the Prison Service and subsequently NOMS since the early 1990s. These data have been published by NOMS since 2007 on its website. It has therefore been possible to calculate the extent to which Op Cap has stretched away from CNA each year.

<sup>68</sup> Reference to Sir David Ramsbotham, former British Army Officer and Her Majesty's Chief Inspector of Prisons 1995-2001. During his time as Chief Inspector came to be known as 'Rambo' for his enthusiastic stance on all aspects of prison reform. This is illustrated in Ramsbotham (2005).

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## *Chapter 5*

### **Senior ministers, and the limits of their influence to resolve the prison capacity problem**

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*There are deeply entrenched cultural points. If you are going to reform this or any other part of public life, you have to have an absolute driving clarity at the centre of what you are going to do. You need the officials, the professional leaders of the service, the politicians, all involved [...] That's why clearance with the PM was so important. But that has never happened. Certainly through Labour, but it didn't happen under the Tories before. If there is not the coherence driving it forward, then it is terribly difficult to make the changes you need to make.<sup>69</sup>*

In the next four chapters, the perspective narrows to look at four groups of individual actors in the system, and their predicaments vis-à-vis chronic capacity stress (CCS). The central theme running through these chapters is one of ‘constrained autonomy’. This means that actors have some autonomy to influence the system. But they are also constrained by their position in the system and by the demands of other actors on them. Actors must find ways of managing their own constrained autonomy, and maintaining continual and acceptable equilibrium in their own position. In order to understand the dynamics of the problematic, it is necessary to understand constrained autonomy of individual actors at each level of the system, and the sub-optimal outcomes which are sustained.

In this chapter, I examine the view from the top of the system, the perspectives and predicaments of the senior ministers with overall responsibility for prisons policy and administration, notably Home Secretaries (and after 2007, Ministers of Justice). Political science literature has often tended to view the outcomes of public policy systems in terms of the high politics involved, *i.e.* the result of what senior politicians do

or do not do. In theory, the minister has the power, and this idea has long been central to political science over the years. The argument here is that this may be the case in theory and, to a large extent in reality, but for a fuller picture, we must also recognize that systems tend to be far more complex, and the position of ministers, even Cabinet ministers, are far more constrained. In the first part of the chapter, I review thirty years of high politics of prisons, and show that ministers have been very much cognizant of the problems of CCS. In the second part I examine the variations in ministerial efforts over the years to alleviate crowding and reform the system. In the final part, I examine some important constraints on ministers from the systemic context.

## **5.1 Seeing the capacity problem from the ministerial perspective**

Autobiographical accounts of former Home Secretaries have told of the stresses involved in being the top political official in charge of the prison system.<sup>70</sup> Accounting for a sizeable chunk of the Home Secretary's portfolio, prisons have in many ways been an 'elephant in the room' policy issue, something which can just about be coped with when lying quietly, but something which also has the power to cause huge disruption (and fear of disruption) if it is aggravated. Douglas Hurd (2003) reflects on sleepless nights in the mid-1980s worrying about prison capacity. 'News from prisons still very edgy' he writes, 'Wandsworth obdurate...Wandsworth suspend industrial action,...but we are not through yet...Prisons filling ominously fast despite my sacrifice of July [extended remission]...Woken by the children at 3am and lie fretting about prison population' (p348). Kenneth Baker (1993) describes the uncertain existence of the Home Secretary, 'much more the victim of day-to-day events than any other minister. He is answerable for many decisions, some of them highly controversial, which are actually taken by other people – chief constables, prison governors, probation officers, and the parole board'(p425). Most Home Secretaries, Baker points out, 'cross their fingers and hope that things will not go wrong in prisons while they are in office' (p454). Looking across the broad sweep of thirty years, some ministers have been lucky in this sense. Others have not been so lucky and have had their terms in office, in one way or another, shaped by acute manifestations of CCS. **Table 5.1** gives a broad overview.

**Table 5.1 Overview of thirty years of Home Secretaries and prison capacity**

	<b>Brief summary of policy and political focus on prisons during term of office</b>	<b>Key events, landmarks, and crises</b>
May 1979 <b>Willie Whitelaw</b>	Responding to severe criticisms of the prison system by May, including crowding, under-investment, and failing industrial relations. New prison building programme and attempts to reform sentencing and parole. CJA 1982 introduces 'suspended sentences'. Pragmatic measures also to reduce pressure. <i>e.g.</i> Imprisonment Act 1980 enabled prisoners to be held in police and court cells	May Committee report Sept 79 Early 1980s - industrial relations unrest and 'lockouts' Prisons Inspectorate estbl. 1981
Jun 1983 <b>Leon Brittan</b>	Continuation of prison building programme and focus on taking forward recommendations from the May Inquiry, particularly on early managerialist reform. Reduction in minimum qualifying period for parole in 1984.	
Sept 1985 <b>Douglas Hurd</b>	Crisis management focus in early years on prisoner and industrial relations unrest. Some reforms to the demand side, <i>e.g.</i> increase in remission period for good conduct 1986. CJAs 1987 and 1988 increased further remission of sentences for good behaviour. Leeds castle meeting in Sept 1987 marked the shift to more intensive focus on policies to reduce the size of the prison population. Managerialist reforms also gained momentum, and Fresh Start agreements abolished overtime in May 1987. Jul 1987 Early plans to introduce private sector in order to reduce the power of the Prison Officers Association.	Apr 1986 National strike action by prison officers and prisoner riots.  Prison staff overtime abolished May 1987  1989 Further serious rioting and local industrial disputes
Oct 1989 <b>David Waddington</b>	Period of industrial relations disputes and series of major riots leading up to the week-long Strangeways riots in April 1990. Inquiry into prison disturbances commissioned from Lord Chief Justice Woolf.	Widespread local POA disputes  Riots at Strangeways prison April 1990
Nov 1990 <b>Kenneth Baker</b>	Government responds to the expansive recommendations of the Woolf inquiry. Capital investment aimed ending practices of tripling of prisoners in single cells, and 'slopping out'. White Paper 'Custody, Care and Justice' sets out a new agenda for prisons, focusing on standards and conditions, introduction of the private sector, and non-custodial alternatives to reduce the size of the prison population. This is formalized in the CJA 1991. High profile escape from Brixton prison Jul 1991. Further report of managerialist change in the prison system.	Woolf Inquiry published Apr 1991  Brixton prison escapes Jul 1991  'Custody, Care and Justice white paper published Sept 1991  Lygo report on management of the prison system Dec 1991
Apr 1992 <b>Ken Clarke</b>	Reversal of key aspects of the CJA 1991, <i>e.g.</i> unit fines. The 1991 Act seen as too liberal and encroaching on judicial independence. The CJA 1993 formalized this reversal of previous Conservative policy. Prison Security Act 1992 intensified focus on reducing escapes from prisons. Managerialist reforms culminated in creation of the Prison Service agency April 1993. First chief executive, Derek Lewis, appointed from the private sector. Move towards more punitive rhetoric in parliament by both Labour and Conservative parties.	First prison contracted out to the private sector (The Wolds remand) May 1991 – second signed in Jul 1992  Tony Blair becomes Shadow Home Secretary Jul 1992  James Bulger murder Feb 1993

**Table 5.1 (cont'd)**

	<b>Brief summary of policy and political focus on prisons during term of office</b>	<b>Key events, landmarks, and crises</b>
May 1993	Continuation of punitive rhetoric, and shift of policy focus towards austerity of prison regimes and prison as deterrence. Howard states in his speech at Tory party conference 1993 that 'prison works'. Short-sentence prison population rises dramatically during his time in office. Two high security prison escapes from Whitemoor and Parkhurst dominate the middle of his term, and lead to the politically controversial sacking of Derek Lewis. CJ and Public Order Act 1994 confirms that POA industrial action unlawful. Crime (Sentences) Act 1996 introduces mandatory sentences.	Sept 1994 – 6 IRA prisoners escape from Whitemoor prison – followed by 'Woodcock' report
May 1997	New Labour government. Straw emphasizes need for more joined-up CJ system, formalized in the Crime and Disorder Act 1998. Continuation of Labour 'tough on crime' stance, and prison expansion through private sector. Focus on zero high security escapes, but also new spending on prison regimes. Pragmatic approach to reducing pressure on prisons through use of early release schemes such as HDC. Renewed focus performance management, evidence-based, and 'what works' policies.	Jan 1995 – 3 prisoners escape from Parkhurst – followed by 'Learmont' report
Jun 2001	First year of term marked by sudden rise in the prison population, and crisis management response. Bouts of isolated but serious rioting. Early attempts by Blunkett to broker agreement with senior judiciary on sentencing changes to reduce pressure on the prison system. The CJA 2003 creates the National Offender Management Service NOMS, launched Feb 2004. Also set up a Sentencing Guidelines Council to coordinate sentencing reform.	Oct 1997 Prison Service Review strengthens ministerial oversight of the system
Dec 2004	Clarke gives a speech to the Prison Reform Trust in Sept 2005 setting out a long-term rehabilitative vision for change in the penal system. Pressure on available prison capacity rises throughout this term in office. Scandal of unauthorized release of foreign national prisoners leads to Clarke's sacking.	Apr 2002 Lincoln prison riot
May 2006	Prison capacity rising and Reid secures funding from Treasury for an additional 8000 prison places. Emergency measures are also introduced in Oct 2006 to get the prison system through a period of acute capacity shortage.	First 'Carter' report on the penal system Dec 2003
Jun 2007	Straw introduces ECL in order to deal with acute capacity pressure. National strike action in Aug 2007 breaks the JIRPA agreement. Straw commissions a second Carter report on prison system and NOMS reform, formalized in the Offender Management Act 2007. This envisages expansive of prison capacity to 96,000. Plus other measures to reduce prison population.	Nov 2004 JIRPA agreement between POA and Prison Service on 'no strike action'
Jack Straw		Apr 2002 Lincoln prison riot
Minister for Justice		Sept 2005 Speech to the PRT
John Reid		Apr 2006 Foreign national prisoner release scandal
		Emergency measures announced Oct 2006
		Acute prison capacity crisis Jun 2007 - End of Custody Licence ECL introduced Jun 2007
		Aug 2007 National POA strike
		Second 'Carter' report Dec 2007

So Home Secretaries have been well aware of the problem of CCS in prisons, and have acknowledged its debilitating effects. In his memoirs, Willie Whitelaw wrote pessimistically of the late 1970s, ‘the conditions quite frankly appalled me, and the extent of the modernization required depressed me deeply’ (1989, p171). As another Conservative minister put it, ‘it’s bad in a moral and humane way. But it’s also bad from a value for money point of view. It’s a waste of money’.<sup>[#66]</sup> On doing things to engage prisoners, another former minister reflected, ‘it’s very difficult to do much in a prison which is overcrowded. You’ve got less time for leisure, less time for actual working, and that makes prison life incredibly difficult. It creates huge stress. For officers, and prisoners. Prisoners get very bored, angry, fed up, sullen. It doesn’t prevent them committing crimes to come back again’.<sup>[#67]</sup>

Ministerial reflections remind us too of the chronicness of certain aspects of the capacity problem. Roy Jenkins wrote of his term in office (1974 to 1976) that ‘I overreacted to this ephemeral public (or press) hysteria about escapes, and tilted the emphasis of prison regimes too much towards security and away from training and work. I ought to have been steadier under fire, but it is easier to say this in retrospect than it was to sustain it during the barrage of daily bombardment (Jenkins, 1991, p205). Willie Whitelaw wrote in 1989 ‘if we persist sending to prison large numbers of petty offenders, and indeed of non-violent offenders, we risk using our prisons for the wrong purpose’ (1989, p234). Both statements, it seems, ring true when read in light of the situation at the end of the 2000s. As one former Home Secretary put it:

The slightly depressing thing is that the sort of things that were being said, thought, felt, and done when I was Home Secretary are not very different from what is being said and done now. Except that the numbers are much greater.<sup>[#68]</sup>

At the heart of the predicament for ministers over the years has been keeping the prison system in some kind of acceptable capacity equilibrium. For the Home Secretary in particular, the predicament can be scoped more widely in the sense that they are responsible for the policies of the criminal justice system, and in coordination with the judiciary, for shaping the level of demand for prison. By introducing new laws on crime which incorporate provision for custody, or by revising existing laws to increase the scope for custody, ministers are by definition making decisions which impact the level of demand for prison. Also, in shaping government policy responses to major societal

events such as rioting or high profile cases of murder, ministerial decisions impact on the level of demand. The other side of the Home Secretary's responsibility is therefore to make sure that the system is set up to deal with the demands made of it.

**Table 5.2** gives an overview of ten groups of measures which ministers employ in order to sustain some kind of acceptable alignment. These distinguish between 'wider legislative, judicial and sentencing' factors (on the left), and 'direct executive measures' (on the right) Each group of measures has associated trade-offs in terms of costs and benefits for ministers. Revising legislation to reduce the level of demand for prison may offer a long-term solution, but such strategies are likely to be costly politically in the context of a government, and indeed a society, which favours tough and more punitive approaches on crime. Similarly, attempting to influence the sentencing behaviour of the judiciary is likely to be less costly for ministers in terms of having to finance additional prison capacity, but they are also likely to be politically expensive in terms of being seen to encroach on judicial independence and being seen to be excessively soft on crime and punishment.

On the right hand side of Table 5.2, there are other things that ministers can do to relieve capacity stress which, broadly speaking, bypass the need for judicial agreement. Building new capacity, for example, may be financially costly and require ministers to reduce investment in other potentially more beneficial areas of spending. Similarly, pushing the system to stretch and absorb higher demand through cost-efficiencies or acceptable quality shading may bring benefits, but the risk here is that it is impossible to know at what point the system will break. Also, the benefits of executive release may be quick and relatively low cost, but again, they run the risk of aggravating the judiciary and providing political opponents with ammunition for attack.

**Table 5.2 The range of options available to ministers for balancing demand and supply in the prison system**

	Wider legislative, judicial, or sentencing measures	Executive measures available to actors in the prison system <sup>*</sup>
<b>Front end</b> <i>(i.e. what goes into the system)</i>	<b>Pass legislation which reduces the use of prison</b> – long term cost-efficient, but does not provide immediate relief and may be interpreted as too liberal	<b>Building new capacity into the system</b> – takes the pressure off, but need Treasury agreement and other causes lose out.
	<b>Influence the judiciary to send fewer people to prison</b> – low cost measure with quick results, but difficult to get judiciary agreement	<b>Squeeze existing capacity in the system</b> – avoid costs of new capacity and increase cost-efficiency, but at some point the system will break or become more disruptive.
	<b>Introduce suspended sentences or viable non-custodial alternatives</b> – maintain judicial independence, but these schemes may be ineffective and not provide quick solutions.	<b>Introduce early release schemes or remission for good behaviour</b> (e.g. ‘tagging’ such as Home Detention Curfew HDC) – reduces pressure on the system, but higher costs of running schemes and political risk of failure
	<b>Bringing forward eligibility for parole or automatic remission</b> – low cost measure which maintains judicial independence, but may be unpopular with judiciary, political parties, and the public.	<b>Other executive release schemes without monitoring</b> (e.g. End of Custody Licence ECL) – quick mechanisms to release pressure quickly, but highly unpopular with judiciary and political parties
<b>Back end</b> <i>(i.e. what comes out of the system)</i>	<b>Introduce sentences with specific conditions for release</b> (e.g. indeterminate or IPP) – maintain judicial independence, but can be unpredictable in terms of how they work in reality.	<b>Improve rehabilitative outcomes of prison in order to reduce demand</b> – desirable in the long term, but difficult to do and does not produce short-term fixes

<sup>\*</sup> Clearly, many of these executive measures require legislative approval.

The predicament for ministers is therefore one of combining these various options in order to manage imbalance, and maintain situations of ‘non-stress’ – whatever form these may take. The basic problem of not being able to do so is often characterized as one of ‘lack of political will’. Two former ministers, the first Conservative and the second Labour, characterize their perception of the problem.

A genuine absence of political will. There are no votes in prisons, both actually and metaphorically. You go into a general election and the population is not interested in what you are going to do on prisons. <sup>[#69]</sup>

It has to be forced. There has to be the political will to do it. To take on the civil service and the unions. You have got to believe in it. Is that the kind of thing that Ministers of Justice are interested in doing? In my experience, no. <sup>[#70]</sup>

There is however a lot wrapped up in the concept of ‘political will’. We might see it as related to intrinsic characteristics of top political officials, a failure on their part to do the things necessary to bring about change. But we are also reminded in the opening chapter that lack of political will may be a function of the system in which these political officials operate, and in this sense, there may be no such thing as intrinsic characteristics but only characteristics determined by the system. Lacey (2008) provides this kind of structurally based explanation for why politicians may be inclined to avoid the problem rather than take it on.

It is of little use to have a clear programme of institutional criminal justice reform, embedded within a coherent theory of liberal democracy, if prevailing failures of the political and economic structure or culture make it impossible to garner electoral and political support, or to build the institutional capacity necessary to enact, implement and sustain that programme (p203).

The problem here is that ministers, as the top political officials in the system, do have considerable scope and autonomy to shape the system over which they preside. It is clear that the top ministers have in one way or another been able to stamp their priorities and beliefs on the system, and certainly in many of the conversations I have had with them, they have been clear about what it was they were able to change by design. It seems that in examining constrained autonomy of ministers, we must find a way of reconciling both possibilities. Lacey’s structurally based account may appear to underestimate the instrumental ability of ministers to change things. But at the same time, if we go too far in this direction, we risk underestimating the power of the constraints on ministers. In the next section I examine in more detail the extent to which Home Secretaries over the years have been able to shape the system and do things to reduce CCS.

## **5.2 Autonomy of ministers to shape and impact CCS**

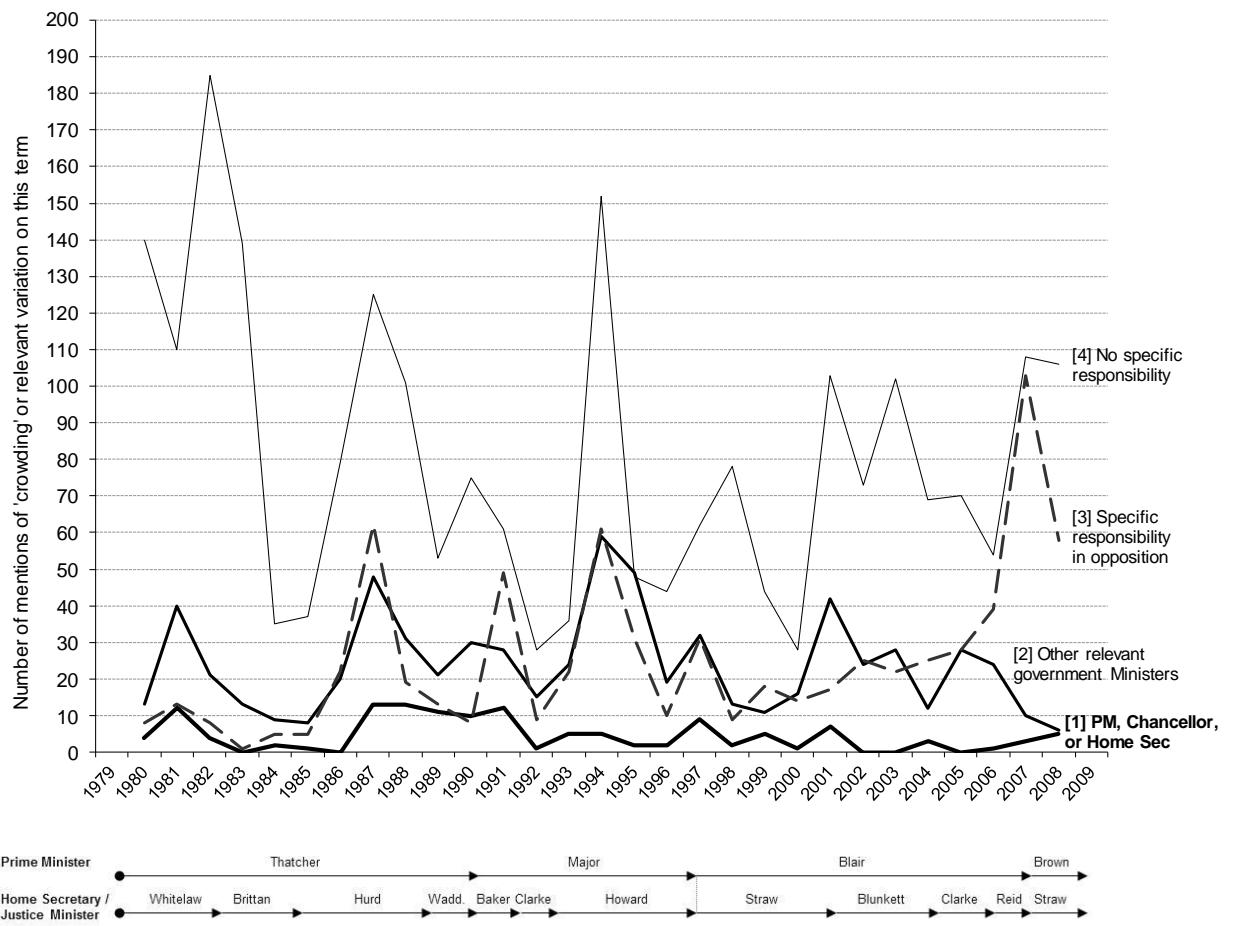
Home Secretaries have written or talked about particular points in their terms of office when their attention has turned to the issue of prison crowding and CCS, whether through need to deal with a crisis or as part of political-personal commitment to change the way the system works. As David Blunkett (2006) writes in January 2002 (seven months into his term):

I have been trying to reshape the whole of what we are going to do about the prison service. There is such poor thinking. We have got a nineteenth century system, and we are just adding to it, trying to improve the same system rather than thinking radically about what we do for people on remand, how we mix tagging with open prisons, and how we have a home domestic curfew before people are sentenced and not just as an early release scheme. I am trying to think the same way about other services as well, rather than just going through the motions (p343).

As a way gauging the extent to which different ministers have prioritized the issue of crowding, I have compiled a picture of its salience in both parliamentary houses over thirty years.<sup>71</sup> **Figure 5.1** shows the number of times ministers (and all parliamentary members) have mentioned the term ‘crowding’ or variations of it in relation to prisons. Four lines show the frequency with which members with different levels of responsibility for prisons have mentioned the term. Line 1 shows salience for the most senior politicians (the PM, Chancellor, and Home Secretaries/Ministers for Justice). As a proxy measure, it provides a reasonably good indication of the extent to which the issue is prioritized at the highest political level.

Amongst parliamentarians of all parties, there has been continual yet fluctuating ‘white noise’ mentions of crowding over three decades (line 4), and this mirrored by Prisons Ministers (Line 2) and their ‘shadow’ counterparts (Line 3). Focusing on Line 1, however, gives us a relative indication over time of how the issue has played at the very top of government. Clearly, the amplifications here are much smaller. Even small amplifications however can tell us something about the extent to which crowding has been prioritized. Between 1987 and 1991, mentions averaged consistently more than ten per year, reflecting a period of concerted political effort by Home Secretaries to eradicate prison crowding. The data suggests that this began under Hurd, and spanned

Figure 5.1: Number of mentions of ‘crowding’ in parliament, by role of the speaker



Source: Hansard and Millbank electronic search databases

the terms of Waddington and Baker. Indeed, throughout the 1980s, ‘eliminating overcrowding by the end of the decade’ was a specific policy objective for the Conservative government and a phrase much used by Conservative Home Secretaries (NAO, 1985, p6). As one former top official told me:

Everyone knows about overcrowding. No-one thinks very much about it. No Home Secretary comes in and gets fretful about it. I only worked for one Home Secretary who brave enough to do something about it, which was Douglas Hurd. <sup>[#71]</sup>

Earlier chapters have discussed what looks like a process of normalization of crowding during the 2000s. Indeed, the trend line from the mid-1990s onwards appears to support this idea. Despite the fact that crowding returns, salience of the issue never reaches these

consistent heights again, apart from a short burst in 1997 with the change of government and ‘new horizon’ declarations by the new Labour Home Secretary Jack Straw. It is interesting in fact that as a new Home Secretary takes office, there appear to be small peaks of mentions in that year, suggesting that new ministers pay lip service to the problem in setting out their vision. But these peaks are ever-decreasing throughout the Labour years.

Clearly, ministers have an important role in shaping policy agendas and priorities, in terms of what they say in public and in private. As one former Prisons Minister put it, ‘politicians can come along and alter things immediately just by taking a different tone’.<sup>[#72]</sup> One way of profiling these variations is to look at what ministers have said about prisons in their annual platform speeches to party conference.<sup>72</sup> Coding these annual speeches allows us to look at the substantive balance in what ministers have said on prisons and sentencing over the years. **Table 5.3** summarizes the findings of an extensive coding exercise,<sup>73</sup> including 25 out of 30 annual ministerial conference speeches between 1979 and 2009. I coded all relevant prison and sentencing-related extracts from these speeches into six categories:

1. *Custodial imperative and deterrent*: references associated with pushing the punitive and deterrent role of prison;
2. *Reducing population pressure on the system*: references associated with encouraging non-custodial alternatives to prison and measures to reduce the size of the prison population;
3. *Adding capacity to the prison system*: references associated with building new prisons, adding new resources, or extra capacity;
4. *Rehabilitative goals and reducing reoffending*: references advocating measures to boost either of these two outcomes;
5. *Increasing the powers of the judiciary*: references which advocate expansion or protection of the judicial powers; *and*
6. *Crowding, conditions, and coping in prisons*: references associated with the state or experiential environment of prisons.

**Table 5.3 How different ministers have emphasized different options for dealing with CCS, 1979 to 2009**

Average number of words across all years in office	[1]	[2]	[3]	[4]	[5]	[6]
	Custodial imperative and deterrent	Reducing population pressure on the system	Adding capacity to the prison system	Rehabilitative goals, and reducing reoffending	Increasing the powers of the judiciary	Crowding, conditions, coping in prisons
<b>Conservative</b>						
Willie Whitelaw	206	196	111	25	87	85
Leon Brittan	327	149	107	0	13	93
Douglas Hurd	203	240	123	14	65	118
David Waddington	214	143	134	0	68	41
Kenneth Baker	202	0	88	72	0	12
Ken Clarke	473	126	100	11	147	0
Michael Howard	486	49	23	0	72	3
<b>Labour</b>						
Jack Straw	64	51	23	0	18	0
David Blunkett	55	67	19	12	0	0
Charles Clarke	56	0	0	379	0	0
John Reid	62	30	0	0	0	0
Jack Straw*	0	23	24	20	0	0

**Source:** All analysis in this table is based on verbatim transcripts of Home Secretary speeches from the platform at annual party conferences. Speeches for Conservative Home Secretaries were sourced from the Conservative Party Archive at the Bodleian library in Oxford. Speeches for Labour Home Secretaries were found by Google search online from various locations.\* denotes that Jack Straw was Minister for Justice and Lord Chancellor, and not Home Secretary, from June 2007.

Looking along the rows in Table 5.3, the variations in emphasis become apparent.

Practically all ministers have emphasized the custodial imperative, *i.e.* the need to lock up certain offenders for certain types of crime. The relative variation in other factors however is interesting. The first four Conservative Home Secretaries (Whitelaw to Hurd) show quite similar patterns. Each talks about the custodial imperative of prison (column 1), yet they also reference efforts to reduce the prison population in size (column 2) and add new capacity to the (column 3). These four ministers also reference ‘crowding, conditions, and coping’ in the prison system more than any other ministers subsequently (column 6), a reflection throughout the 1980s of the ministerial commitment to eradicating crowding. Within this group of four however, there are variations in the balance between more punitive emphasis (column 1) and more liberal or ‘decarceral’

emphasis (column 2). Brittan and Waddington tend more towards the more punitive side. Whereas Hurd and possibly Whitelaw too tend towards the decarceral side. Indeed, of these four, only Hurd and Whitelaw reference rehabilitative goals of prison (column 4).

The last three Conservative Home Secretaries (Baker, Clarke, and Howard) encompass a transition in the system from 1991 onwards. The 1991 Criminal Justice Act was in many ways the culmination of this sustained emphasis throughout the late 1980s on decarceral policies. A generally more optimistic climate is reflected in the fact that Kenneth Baker makes strong reference to rehabilitative goals in his 1991 conference speech. However, in the numbers for Clarke and Howard, we see signs of the strong shift towards a more punitive policies throughout the 1990s.<sup>74</sup> Clarke's speech to conference incorporates a much stronger line on the custodial imperative (column 1), and a commitment to reinstate many of the powers of the judiciary which were perceived to have been lost under the 1991 Act (column 5). Four subsequent years of Howard amplified and consolidated this transition. In his four speeches to conference, he hugely accentuates the custodial imperative, and severely cuts emphasis on decarceral policies (column 2) or adding new capacity to the system (column 3).

The most striking thing about Labour Home Secretary speeches since 1997 is that they appear to mention prisons and sentencing much less than those of their Conservative predecessors. This is partly explained by the fact that their speeches have become shorter and pithier. But it is also explained by the fact that Labour ministers have said much less about prisons and sentencing, and have focused on more abstractly on themes of crime and criminal justice. No Labour minister has referenced any themes relating to 'crowding, conditions, or coping' in prisons (column 6), despite the fact that crowding has risen continually since 1997. Despite the wider point that the numbers seem much smaller under Labour, we still however see the same kind of balance between custodial imperative and decarceral options. These patterns are not strong however, and by the time that we reach Reid and Straw in the bottom two rows, these speeches barely contain any substantive references to prisons. The one striking anomaly in this general pattern is the very high emphasis of Charles Clarke on the need for rehabilitative reform.<sup>75</sup>

Looking also at the data in Figure 5.1 in greater depth, we can shed light on these differences between Conservative and Labour ministers' attitudes to crowding. For each

mention of ‘crowding’, I recorded whether the speaker was implying that crowding was a supply-side problem (*i.e.* a problem of not supplying enough capacity), a demand-side problem (*i.e.* a problem of excessively large prison population), or a combination of both.<sup>76</sup> **Tables 5.4 and 5.5** show results for Conservative and Labour

**Table 5.4: Percentage of references implying supply or demand-side interpretations of crowding *UNDER CONSERVATIVE GOVERNMENT, 1979 to 1997***

% per cent	With Ministerial responsibility	Responsibility in opposition	No specific responsibility
<i>Crowding implies...</i>			
Supply side problem	27	1	9
Demand side problem	3	23	11
Both	15	12	10
No specific reference either way	55	64	70
Total percent	100	100	100
<i>Total N</i>	509	356	1481

**Table 5.5: Percentage of references implying supply or demand-side interpretations of crowding *UNDER LABOUR GOVERNMENT, 1997 to 2009***

% per cent	With Ministerial responsibility	Responsibility in opposition	No specific responsibility
<i>Crowding implies...</i>			
Supply side problem	9	7	6
Demand side problem	5	19	17
Both	9	9	8
No specific reference either way	77	65	69
Total percent	100	100	100
<i>Total N</i>	256	379	865

Source: Analysis of Hansard and Millbank electronic search database

governments, distinguishing between members ‘With Ministerial responsibility’, ‘With Responsibility in Opposition’, and ‘No specific responsibility’. Table 5.4 covers all mentions during Conservative governments from 1979 to 1997. Looking at the shaded section in particular, 27 per cent of mentions by Conservative members with ministerial responsibility suggest that crowding should be seen as a supply-side problem, *i.e.* one of not providing sufficient capacity to deal with demand. This compares to 23 per cent of mentions by Labour members with some kind of responsibility in opposition who

implied specifically it was a demand-side problem, *i.e.* one of an excessively high prison population. For Conservative ministers, therefore, crowding was predominantly talked about in terms of under-supply of capacity in the estate.

Focusing on the same trends during the Labour governments from 1997 onwards (Table 5.5), we see far greater ambivalence amongst Labour ministers on the root causes of crowding. Here only 5 per cent of mentions by Labour ministers imply that crowding is a demand-side problem (compared to 23 per cent in opposition). It is also interesting that 9 per cent of mentions by Labour ministers imply that crowding is a supply-side problem. This is nowhere near as high as 27 per cent under the Conservatives, but it is also higher than the 1 per cent recorded by Labour during their time in opposition. This apparent ambivalence is supported by fact that 77 per cent of mentions were not specific either way (compared to 55 per cent under Conservative governments).

All three data items in this section suggest interesting contrasts between Conservative and Labour. First, the issue of crowding appears to have been almost completely normalized by Labour ministers despite the fact that crowding itself has risen once again to aggregate levels almost on a par with the 1980s. Second, the relationship with the judiciary is also marked in contrast. Conservative ministers have tended to view crowding less as a function of over-demand created through sentencing behaviour and more as a function of government's inability (specifically, the previous Labour government's inability!) to provide sufficient capacity. Labour ministers, generally speaking been more ambivalent in their approach.

We have seen therefore how Home Secretaries over the years have to great extent been able to influence the tone and the priorities in terms of what is done to tackle CCS. We have seen continuity over time in some respects, but we have also seen important and nuanced variation in the way in which different individuals and different personalities have committed themselves to the problem. In some respects too, Conservative and Labour Home Secretaries have reflected the general orientations of their parties and the political climate of their time. Yet, at many levels, they have shown many similarities in their approach. One former Conservative minister said as much.

Labour's instinct will always be to keep the liberal lobby happy, but if you look at what they've actually done, you will see that their record is pretty similar to ours. Expanded the prison programme, get a grip on regimes, issue guidance to courts. They are driven by practicality as were we. They haven't got the spaces. <sup>[#73]</sup>

In the final section of this chapter, I move on to look at some important constraints on ministers' autonomy to reform or impact CCS, and how these have evolved as governments and ministers have changed.

### **5.3 Constraints on ministers' autonomy to reform the system**

The chapter so far has examined CCS as the outcome of the choices and actions of top ministers. Clearly, ministers do have an important influence, and have shaped the development of the system over the years in what they do and, often more importantly, what they do not do. As Newell (2003) writes 'politicians could do so much to affect prison population and it is disingenuous to say otherwise' (p7). But, as I show in this section, ministers have their autonomy constrained by a whole range of factors, and hence any lack of political will must be seen in the context of these constraints. After all, political will or lack of it must, to a great extent, be seen as a contingent upon the numerous and countervailing factors which impinge and shape ministers' scope for action.

In this final section, I examine six factors which can be said to have constrained ministers in their efforts over the years to do something about CCS in the prison system. These are relations with [a] the judiciary, [b] managing the press and media, [c] negotiations with Treasury, [d] the Prime Minister and Number 10, [e] the Prison Officers Association (POA), and [f] their own top prison officials.

#### *a) Sentencing and relationships with the senior judiciary*

Described by a former Conservative Home Secretary as 'extraordinarily tricky',<sup>[#74]</sup> the relationship with senior judiciary over the years has contained a fundamental paradox. In attempting to influence the level of demand for prison, ministers seek to influence sentencing behaviour of judges and magistrates. The more that ministers are seen to influence however, the more the judiciary are inclined to resist and disengage, thus perpetuating the problem. During times of capacity surplus, ministers may feel only weak compulsion to interfere with sentencing. During times of capacity stress, particularly the acute kind, ministers must find avenues of influence – but without being seen to influence. And as a former Lord Chief Justice explained:

There is no pressure from politicians because they get the Lord Chief Justice jumping down their throat if they start telling judges not to send people to prison. They do occasionally. They allow themselves to get pulled out by the Lord Chief Justice, probably privately, who says this is none of your business, don't start telling the judges not to send people to prison for so long simply because you haven't provided the prison spaces.<sup>[#75]</sup>

Traditionally, Conservative ministers have been more inclined to accept the principle of judicial independence in sentencing, and this is indicated by the data in Table 5.3.

Ministers have commented on the strict separation between the executive and judiciary throughout the Conservative era,<sup>77</sup> and a clear normative line on the obligations of the executive to provide sufficient places to accommodate demand, whatever that might be.

As one Conservative minister put it:

To try to get the courts to take responsibility for where we have fallen short is quite wrong. That corrupts justice and justice must be independent. It must work without reference, in an ideal world at least, to practicality, and it must never be governed by practicality. In other words, you should never say I would send this man to prison but I can't because there isn't enough space.<sup>[#76]</sup>

Despite this, Conservative ministers have found ways to modify remission and parole, and introduce other measures such as suspended sentences, all with a view to reducing the size of the prison population. Labour ministers have also taken the view that the executive should not encroach on judicial independence. However, throughout the Labour era, we have seen a more pragmatic approach, which implicates the sentencing behaviour of the judiciary as part of the problem, and has sought to reformulate the relationship between ministers and judiciary as one of 'partnership' towards decarceral outcomes. This has interesting countervailing dynamics. On the one hand, Labour rhetoric since the mid-2000s has accentuated partnership approaches with the judiciary (NOMS, 2006; MOJ, 2007; Jacobson et al., 2008). But at the same time, this pragmatic approach has aggravated senior judges and magistrates. The introduction of early release schemes (such as HDC and ECL) have been examples of this kind of aggravating pragmatism. These schemes have been an important factor in allowing the system to run at continually high levels of capacity. Yet, at the same time, they have done little to build trust between the judiciary and Labour ministers.

Ministers reflected on the difficulties of maintaining trust in this relationship, and the tendency for agreements to unravel and momentum to dissipate throughout their time in office. Labour ministers, in particular, described the problems of striking a balance between encouraging the judiciary towards decarceral policies, and the need to impress custodial imperatives on the public. One former Labour minister reflected on what he saw as the ‘schizophrenic’ nature of the messages coming from ministers and judiciary.

Judges used to say you are contradictory. You are telling us contradictory things. I would say no, you are hearing them contradictorily. In my head, they are perfectly rational. You can have ‘life means life for lifers’. But you can start on a different trajectory for those who have run up against the system for the first time. So, that’s what we tried to do, and I didn’t do it. It’s as simple as that. I didn’t pull it off. All the elements of the system pull against. When you are passing legislation like the Criminal Justice Act, and you get into parliament and you’ve people pushing one way and speaking the other. That’s the battle. There was an effort. There was a coherent penal policy in the making, but not necessarily in the delivery. And it didn’t come off. <sup>[#77]</sup>

Over the course of a term in office, ministers describe a process of general unravelling.

You do begin to lose grip. And it accelerates away from you. If I had my time again, I would make a supreme effort to say to [*senior judiciary*], because we had split responsibilities, look can’t the two of us just sit down? When I got round to doing that with the judiciary, the answer was no. We are prepared to sit down and talk about our pensions. But we won’t sit down with you because you will want to interfere with what we are doing. That I might have been able to pull off early in my term, but by the end? No. <sup>[#78]</sup>

The inclination for ministers has been to lay the blame for a rising prison population with the judiciary and sentencing behaviour. The judiciary in response argue that they are merely following the legislative basis and associated guidelines laid down by parliament and the executive. As one senior political insider put it:

The judiciary won’t take responsibility because they see it as government’s role. And the government won’t do it because it’s perceived as shortening sentences and being weak. It’s hopeless. It’s actually a basket case. <sup>[#79]</sup>

For Home Secretaries who are in office for relatively short periods of time, there is often insufficient opportunity to build the trust and momentum. For those who are in office longer, as these quotes suggest, there is danger that trust and momentum both dissipate

and cannot be refound. Again, there are frustrating countervailing effects here in that long periods of time are required for trust to build up, but change over long periods of time also increases the potential for other variables to intervene and undermine trust.

*b) Politicians, the tabloids, and public opinion*

The quote from Roy Jenkins above gives a flavour of the anxiety ministers have felt towards the potential for ‘hysteria’ to break out in the tabloids on some aspect of prisons. Practically all ministers interviewed acknowledged this anxiety, and the distortions and knee-jerk reactions which ensue as a means of controlling the damage and being seen to deal with the crisis. Ministers frequently talked of the inherent unpredictability of the tabloid press, and constant potential to be ‘blind-sided’ by stories which come from somewhere deep in the prison system and are picked up by the press. As one former minister put it:

The press really make it. They decide. On suicides, for example, you get it at the right time from the press point of view, and you’d think it was the only suicide for 50 years, and it’s all down to the minister.<sup>[#80]</sup>

It is interesting that ministers are frequently accused of ‘meddling’ in operational matters, but as ministers often pointed out, it is largely because it is they who ultimately must appear at the despatch box and account for what has happened. As one former Director General reflected, ‘these things are, to a large extent, driven by the populist media. Tabloids have a big influence because they will pick up on these big cases. The politicians respond to that, as it is them who have to do something about it at the end’.<sup>[#81]</sup> Politicians reflected on the consequent need to think in terms of how tabloid newspapers would react to policy reforms, and to limit the prospects of tabloid storms. As one minister put it, ‘you’ve got to sell it to the reader of the Daily Mail. You’ve always got that political balance between rehabilitation and protecting the public and punishment. It’s a very delicate thing’.<sup>[#82]</sup> Often a media storm can upset the balance for ministers and cause them to renege on agreements already in place. One former Lord Chief Justice reflected on the destabilizing effects.

It does happen. [Former Home Secretary] had a real go at it. When the tabloids started howling, he was the first to drop it. He would argue that I am wrong on

that. But I felt very angry at the time as I had contributed to the judiciary being exposed, and when it went wrong it was explained away as a lack of resources. <sup>[#83]</sup>

Ministers have reflected on the difficulties of presenting rehabilitative reforms to the media and public, and relatively low political pay offs involved. As many have pointed out, ministers rarely if ever lose office on the back of disappointingly low rehabilitation rates in prisons, or continual breach of CNA. If expectations are low in this respect, then ministers are unlikely to suffer politically from sub-optimal outcomes. Losing prisoners to escape, serious riots, or being seen to make life too comfortable for prisoners, however, has been perceived to have much more costly consequences for ministers. Numerous interviewees, for example, talked about the *quid pro quo* agreed between Home Secretary Jack Straw and Director General Martin Narey at the start of Labour's first term. Straw would support Narey's plans to push for investment and activity in rehabilitative programmes in prisons in return for Narey making sure that high security escapes remained at zero level. Indeed, the data in Table 5.2 has illustrated an ambivalence at the top of the political system over the years towards rehabilitative outcomes of prison. As one former prison professional put it, 'that sort of serious thinking about how to get the best out of the prison system is only fleetingly considered...at best...in the media, and in political terms, it plays very little role'.<sup>[#84]</sup>

c) *Negotiations with the Treasury*

Interviews with former Treasury officials have surfaced what we might see as a default sceptical attitude of the Treasury to prisons and funding prison capacity. As one former official put it, 'prison is low down the list. It is a waste of money. They don't make anybody better. They don't cut reoffending rates. They cannot be said to work in any sense, and the cost goes way past the profit from them'.<sup>[#85]</sup> The Treasury therefore has been an important influence on the ability of ministers to manage capacity and the prison population. Indeed, a former Labour prisons minister who subsequently became Chief Secretary to the Treasury pointed out, apparently only half-ironically, that 'the most influence he had had as prisons minister was when he became Chief Secretary'.<sup>[#86]</sup>

To depict the Treasury however as a dogmatically stringent actor is too simplistic. As we have seen in chapter 3, ministers have been able to secure considerable capital funding for prison building throughout the 1980s and early 1990s. Whitelaw

writes of his gratitude to Geoffrey Howe, Chancellor of the Exchequer in 1979, for the considerable sums of money agreed for new prison building (Whitelaw, 1989, p170). A similar injection of funds came in 1991 on the back of the Woolf inquiry, in 1997 in order to fund rehabilitative programmes, and throughout the late 2000s for ‘emergency’ prison capacity. Officials also pointed out that by the late 1990s, arguments that you got the best out of public agencies by squeezing them to their absolute limit had come to be seen as ‘unsophisticated’ in the Treasury<sup>[#87]</sup>, as the approach became more progressively formulated to allow agencies budgetary leeway to ‘invest to save’. As one Treasury official described it, ‘we end up buying reform...using extra capacity to get something in return’.<sup>[#88]</sup> Indeed, officials argued that the Treasury had been keenly interested in the rehabilitative potential of prison, and had been willing to release new money into the system to target reoffending, but had been disappointed by the lack of results.

Clearly, however, the Treasury have played a role in holding the prison system’s ‘feet to the fire’ over the years. Often ministers would agree with the argument that Treasury follows an approach of constructive under-supply. As one minister explained:

The Treasury will say, you seem to be coping with finding places for the prisoners we’ve got now. And we’ve no reason to believe the numbers will grow significantly. So I’m sorry, you know the situation we are in...we just can’t find the extra funds. In fact, we expect a saving from you again over the next three years.<sup>[#89]</sup>

Ministers described ‘heated’ exchanges between themselves and Treasury officials over expenditure agreements in the normal spending review rounds, but also for supplementary funds, which become necessary during the spending cycle in order to accommodate increased demand. A former Labour minister reflected:

The Treasury? Don’t even go there. It was like taking teeth out. You’d think you’d got an agreement and then it slipped away when it came to the Spending Review. It would be the last thing on the agenda. You’d get some vague agreed promise that would slip away. Because you were always having to counterweight one thing against another.<sup>[#90]</sup>

The perspective from Treasury officials however was that often the requests for capital resources coming from the Home Office seemed excessive and based on insufficient justification. As one Treasury official reflected:

We got a letter on asylum and prisons asking for a tonne of money. £1.4 billion over three years on the capital side. There was a tonne of resources that seemed to have been plucked out of thin air. And a warning that we would need more in future. That was from the Home Sec. <sup>[#91]</sup>

Officials also talked about games of brinkmanship between ministers and the Chief Secretary, the outcomes of which would tend to feed into the perpetuation of pushing the system to ever higher levels of capacity, and then crisis response at key junctures. As one former top prison official explained:

You always play dare, in which the Treasury says to the Home Sec or Justice Sec, it's your job to manage the population, we're not building for you. And it is for the Home Sec to decide whether they believe that, or whether they just hold their nerve and do nothing, until eventually it is going to be a public scandal, at which point money will arrive at very short notice and you will have to spend it quickly. <sup>[#92]</sup>

Treasury officials talked about how Home Secretary John Reid, for example, had approached the Treasury in late 2006 in order to stave off the impending capacity crisis of summer 2007. 'Reid asked for 15,000 new places, we gave him 7,500. It wasn't entirely new money, we just gave the Home Office flexibility to move funds around. If prisons are your priority, we said, then act accordingly'. <sup>[#93]</sup> Departmental officials interviewed suggested that these new places were not considered particularly good value for money, but they had been necessary as part response to the acute shortage. One official reflected on Reid's ability to use impending crisis as a lever for freeing up funds. 'I kind of admired his ingenuity. He had convinced himself that the Home Office was in crisis. Foreign national prisoners were at the top of his agenda. Prisons were connected in his mind with trouble, and he liked the idea of himself being the white knight and riding to the rescue with 8,000 places'. <sup>[#94]</sup>

*d) The prime minister and Number 10*

As former ministers have pointed out, the Home Office has tended to be a portfolio which defines success in terms of 'lack of failure' rather than anything more positively couched. As one former minister put it, Prime Ministers have 'usually put a safe pair of hands inside the Home Office, and hope for the best'. <sup>[#95]</sup> Indeed, Prime Ministers have generally taken a back seat on prisons policy, beyond a concern that costs are kept down

and that there is sufficient capacity to accommodate demand. Conservative ministers agreed that Conservative Prime Ministers Thatcher and Major left their Home Secretaries to get on with managing the prison system. On Thatcher's approach, one minister reflected:

The Home Office generally had very little interference from Margaret Thatcher when she was Prime Minister. Partly because Willie reassured her. And also partly, and I know this to be true, her shrewd political judgement that there were no stars to be obtained on Home Office subjects.<sup>[#96]</sup>

On the cost and stability issue, Thatcher was interested in her Home Secretaries keeping control over the system and not letting situations or pressures get out of hand. This minister continued:

She was interested in the cost. Therefore to some extent she would have accepted the Treasury attitude. She had a natural Treasury approach to this. But not fortissimo. She was pleased, specifically. She said this to me. The Home Office is very quiet now. She liked that. She didn't want total eruption.<sup>[#97]</sup>

Under Major, Home Secretaries Clarke and Howard emphasized a more punitive penal rhetoric and policy (Balen, 1994; Crick, 2005), and by and large, found continuity under Blair. Blair and Number 10 played a more direct role in driving tough lines on crime and prison, and Labour Home Secretaries were aligned with this message, both in finding ways to deal with ever-inflating prison population and keeping the system secure and quiet. Indeed, the particular power relationship between Blair and Gordon Brown in the Treasury often constrained Home Secretary autonomy. Interviews with officials surfaced quite startling examples of the Home Secretary being sidelined on negotiations on prisons, and deals made bilaterally in private between Blair's office and Brown's aides. It was reported, for example, that in response to the request for £1.4 billion from the Home Office during the early 2000s, Number 10 and Treasury agreed to release somewhere in the region of £250 million, a decision which was taken bilaterally without the Home Secretary even being invited to the meeting.

*e) De facto power of the Prison Officers Association*

It is clearly the prerogative, and in many ways, the right of the Prison Officers Association (POA) to do all it can to protect the interests of its members. However,

ministers from both parties have commonly pointed to the threat of POA action as one of the major constraints on attempts at modernization and reform.<sup>78</sup> About Labour Home Secretaries Roy Jenkins and Merlyn Rees in the late 1970s, Barnett writes that they ‘preferred to defer expenditure on prisons rather than cut the size of prison staffs, much as they argued the desperate need for more prisons’ (Barnett, 1982, p67). This in part reflects perhaps ideological inclination of Labour ministers of that era to look after the interests of workers. It is also likely to reflect a more general reluctance on the part of ministers to do things to aggravate this powerful and potentially disruptive union.

Throughout the 1970s and 1980s, the POA commanded a powerful position, confrontational and militant in its style, and widely acknowledged to have stranglehold over local prison cultures and practices, to the extent that many large local prisons were known as ‘POA jails’ (indeed, some still are). POA power was eroded somewhat as a result of the move to make national industrial action unlawful as part of 1994 legislation.<sup>79</sup> This Act (Section 127) was subsequently rescinded in 2005 to develop a more conciliatory and cooperative style of industrial relations. The removal of this section was followed by the establishment of a mutual no-strike agreement,<sup>80</sup> which critics describe as ‘an important symbolic step, but one which has made little day-to-day difference’ in the relationship between the Prison Service and the POA (Bennett et al., 2008, p128). National industrial action in August 2007 demonstrated the frailties of this agreement, and, once again in 2008, inciting industrial action by officers was made illegal. For many in the system, however, the POA retains its *de facto* power. One current governor summed up this widely held view.

The POA ignored a high court injunction and they decided to do nothing about it. If I was one of thousands of POA members, I would listen to them when they say, don’t listen to your government, don’t listen to your governor, we have proved that we are powerful to see this through. On a scale of 1 to 10, how influential are the POA in all of these things we are talking about? About 9, I would have thought.<sup>[#98]</sup>

At high political levels, many shared this view. A former Permanent Secretary of the Home Office suggested that ‘the POA were just off the scale and would not be prepared to accept no-strike agreements and would threaten injunctions and all sort of things’.<sup>[#99]</sup> Despite some degree of modernization in the union, many believe that an unreformed and confrontational style is still visible.

Officials reflected on the opportunistic tendencies of POA strategies during times of acute capacity stress. On numerous occasions, POA officials have offered ministers to take more prisoners into their jails in return for selective benefits. In March 2008, for example, during a visit by the prisons minister to Birmingham prison, a large local with a reputation for having strong POA influence, the POA offered to take more prisoners into the prison in return for increased numbers of staff. As officials acknowledged, this was a ‘very seductive message to ministers at the time’, one that put management on the back foot, and encouraged ministers themselves to return to managers and push them to look for opportunities to stretch the existing capacity of the system.

The combination of constraints here pose difficult predicaments for ministers. During times of capacity stress, they must to a great extent rely on the cooperation and efforts of prison staff. This puts the POA in a strong position however, both because it is itself a vital part of the crisis response, and because the threat of industrial action can be used instrumentally at the highest political level. At the same time, however, ministers are aware of the threat of the union, and are inclined to want to introduce measures to curtail this power. The threat of private sector competition and market testing has been an important aspect in this respect. Ministers have felt the pressure from the Treasury to push market testing and other competitive measures, yet at the same time, they have also had to have regard for the political consequences of aggravating or being seen to test the union. But these ministers are also under pressure from the Prime Minister to keep the prison system quiet and not risk widespread disruption.

*f) Reliance on and resistance from senior officials*

This interface between ministers and the top executive officials has been another potential source of constraint for ministers over the years.<sup>81</sup> The principal-agent dynamics are complex though. Ministers clearly rely on their top officials to deliver a quiet and cost-effective prison system, yet at the same time, they have also been inclined to be frustrated by the system and by those who wield considerable *de facto* power by being the ones who are able to ‘deliver’ it. Blunkett (2006), for example, writes scathingly six months into his first term as Home Secretary.

Some of these Home Office officials are the worst, most obstructive, miserable, disengaged and disinterested group of people I have ever come across, which indicates a degree of demoralisation and complete lack of leadership (p343)

Such ardent criticism must, it seems, be filtered to some extent, yet at the same time, it also reflects the frustrations of a senior minister, and the limitations in being able to reform a large and complex bureaucratic system which is under continual pressure. In Blunkett's writing, the principal-agent conflict is continually visible. Set against the difficulties outlined above in maintaining trust with the judiciary, we see how the minister must find some kind of equilibrium between two competing pressures. Blunkett (2006) writes in March 2002:

We've had three meetings during the course of the week on the rising prison population, but I've just got to hold my nerve and not allow myself to be pushed around by officials who always manage to get ministers to end up being the fall guys. Because managing the prison service in difficult circumstances falls to the managers, but executive release, which releases them from having to manage it in that way and lets the safety valve go, that's down to ministers. (p360)

Other ministers, Conservative and Labour, have had to deal with the constraints of senior officials. Extensive literature and interviews with insiders have highlighted the problems Michael Howard had with Derek Lewis (Lewis, 1997; Widdecombe, 1999; Kochen, 2000). Numerous interviewees have talked about the tensions between Charles Clarke and Martin Narey, former Director General of NOMS. Clarke's vision for rehabilitative change was seen by officials at the time as completely unrealistic given the pressures of having to manage the prison population. And former officials reflected on the anxieties of John Reid towards what his departmental officials were telling him, and the political risks of acute capacity stress.

You could tell John Reid didn't trust the Home Office, so he felt he needed to second guess everything. If they do trust you, by and large, they let you get on with it. He thought his job was on the line daily. He said, if I have to let people out of prison, I'll lose my job. When you are thinking that, you've got your eye on the numbers haven't you. <sup>[#100]</sup>

I examine this principal-agent interface between ministers and top officials in more detail in the next chapter. In this section I have tried to illustrate, albeit briefly, how managing the relationship with top officials is just one aspect of a much wider set of

constraints on ministers. As many experienced politicians have pointed out, it is possible to change the system from the top, but this requires a strong top minister, with sufficient time in office, and the right combination of external and internal factors pushing for the same kind of change. As one former minister pointed out, ‘it takes a long time for a Home Secretary to change anything. It’s a big boat and it takes a long time to turn. If you are only there for two years, you can’t do very much’. <sup>[#101]</sup> As another pointed out, ‘your Home Secretary may change, and because it is a long term business, you need long-term consistency. If you don’t and the person coming in has a radically different approach, then the whole thing gets messed up’. <sup>[#102]</sup> While ministers are in office, however, they must find a way of balancing all of these dynamics, as well as their own aspirations for changing the system.

#### **5.4 Conclusions**

Ministers are often the target for blame for public policy problems. We have seen how this can only be partly justified in a context in which ministers must find ways of managing their own predicaments of constrained autonomy. Top ministers over the years have been frustrated to some degree or other in their efforts to reform the system. As one former Conservative minister pointed out, ‘it is not a problem of an unseen conspiracy. It’s just that the problems are so difficult’. <sup>[#103]</sup> In short, there is a limit to what ministers can do in their time, and no certainty as to how long their time will actually be. Ministers were also well aware of the sensitivities of the system over which they are presiding. As one put it:

If you force a confrontation in this way, you are always frightened as a politician that the whole thing goes tits up, and you are back to riots and escapes and all the rest of it. It’s a very delicate thing you are carrying, the prison system. Because it is so near capacity, and because there are very difficult things like suicides and so on, I was frightened of doing anything which let the whole thing go. <sup>[#104]</sup>

Most Home Secretaries have at some point during their term had to turn their attention to some acute aspect of CCS. Top ministers have clearly been able to alter the tone of debate, change policy direction, and move the system, at least to some extent, towards different end goals. For Home Secretaries with clear policy intent and a decent length of time in office, such as Hurd or Howard, it is possible to see how this change of emphasis

can gather momentum and begin to impact on the system in one direction or another. For many observers, this aspect of continuity and alignment of interests and goals is vital in dealing with CCS. As one minister put it:

That needs careful preparation and consultation. Not just a hurry, hurry approach with the latest wheeze. You have to talk to everybody concerned with offending behaviour. Build up a kind of ‘acquis’ of accepted norms upon which reforms can build reforms. It needs years. And it has to be a non-partisan matter.<sup>[#105]</sup>

The constraints outlined in this chapter however, the way in which they sequence and interact dynamically over time, make it difficult for this kind of *acquis* to build. For ministers, the degree of instrumental control and influence must be continually sufficient to keep all of these countervailing dynamics in some kind of manageable equilibrium, and keep the whole system moving towards desired goals and outcomes. In some ways, this involves completely unrealistic expectations of ministers’ abilities to bring about change by instrumental design. The variables are indeed too complex. As one minister put it, ‘in life as in politics, you’ve got to know what the second and third step after you make the first one. If you don’t, the first one is as far as you will get.<sup>[#106]</sup>

For ministers in office, therefore, it is perhaps excessively cynical to suggest that they would not try for prison reform on the grounds of knowing the odds on its likely success. Most top ministers over the years have placed more faith in their ability to bring about change despite the constraints, and some of those would admit to having a good go. Vanity has also played its part. Yet for experienced insiders, those who have seen Home Secretaries come and go, we find much more deeply-seated scepticism about the expectations and outcomes of ministers and their visions. As one former Permanent Secretary explained:

I don’t think anyone in the Ministry and in the Home Office expects success. We are all conscious of what can go wrong, and if [the Home Secretary] emerges having handled one or two public order situations well and if he (*sic*) has some generally approved legislation, that’s really it.<sup>[#107]</sup>

The next chapter looks at the problem from the next level down in the principal-agent chain, the perspective of top officials in the system, and their own predicaments of constrained autonomy, both upwards vis-à-vis ministers and political imperatives, and

downwards in their role as managers and ‘deliverers’ of a quiet and cost-effective prison system.

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<sup>69</sup> Former Labour Home Secretary <sup>[#65]</sup>

<sup>70</sup> The following summarizes coverage of prison issues in autobiographical and biographical accounts of former Home Secretaries. Roy Jenkins devotes around 7 pages to prisons in his autobiography (Jenkins, 1991). Other biographical accounts of Jenkins discuss prison-related themes (Allen, 2004). Willie Whitelaw devotes around 15 pages of his memoirs to prisons issues (Whitelaw, 1989). Aitken and Garnett (2002) write extensively on prisons in their authorized biography of Whitelaw. Kenneth Baker devotes around 10 pages to prisons in his autobiography (Baker, 1993). Douglas Hurd (2003) devotes around 6 pages to prison in his memoirs. Stuart (1998) writes extensively on Douglas Hurd and prisons in his authorized biography. Two authorized biographical accounts of Kenneth Clarke’s time as Home Secretary discuss prison-related themes (Balen, 1994; McSmith, 1994). Crick (2005) writes extensively on Michael Howard and prisons. David Blunkett (2006) covers prisons over 40 pages of his memoirs.

<sup>71</sup> Figure 5.1 is based on near-comprehensive analysis of individual references to ‘prison’ and ‘crowding’ made by parliamentarians in the both houses of parliament between 1980 and 2008. I used Millbank Hansard ([www.hansard.millbanksystems.com](http://www.hansard.millbanksystems.com)) and Hansard parliamentary archives ([www.parliament.uk/search](http://www.parliament.uk/search)), both online search engines, to compile a database of 3,846 references. In each case, I recorded the name and position of the speaker, various contextual characteristics of the reference, and qualitative aspects such as whether it implied predominantly a demand-side or supply-side interpretation of crowding. This coding work took around three weeks in total to complete during September 2009.

<sup>72</sup> Party political conference platform speeches provide a standardized format for comparative analysis. Ministers may be inclined to talk up aspects of their approach which correspond to what they expect their audience will want to hear. However, it is unlikely that they will completely hide things which are likely to be unpopular, and therefore looking at the variations around the edges can tell us quite a lot about the nuances of each minister’s approach.

<sup>73</sup> I coded 25 ministerial platform speeches out of a possible 30, and copied verbatim into a spreadsheet all extracts relating to prisons or sentencing. I excluded all text relating to general issues of crime and society, law and order, policing, immigration, security, and other aspects in the Home Secretary’s portfolio. For all these extracts, I counted the number of words and allocated fragments of text into one of six possible categories outlined in the main text next to Table 5.3. For each Home Secretary in each category, I record the average number of words across years in office. All Conservative party speeches were sourced from the Conservative Party Archive held at the Bodleian library in Oxford. All Labour speeches were sourced online through Google search. The speeches included are listed in the bibliography as follows: Whitelaw (1979, 1980, 1981, 1982), Brittan (1983, 1984), Hurd (1985, 1986, 1987, 1988, 1989), Waddington (1990), Baker (1991), Clarke (1992), Howard (1993, 1994, 1995, 1996), Straw (1997, 1999), Blunkett (2002, 2003), Clarke (2005b), Reid (2006), Straw (2007, 2009).

<sup>74</sup> Balen (1994) records Ken Clarke’s disbelief, on becoming Home Secretary in November 1992, that the Criminal Justice Act 1991 had gone so far to limit judges’ sentencing power (p240). Indeed, in the Criminal Justice Act 1993, Clarke manages to reverse many of the key aspects of the 1991 Act. The irony here is that Clarke himself voted for this 1991 Act whilst Minister for Education, but in his own defence points out that ‘like most people who voted for that Act I had not kept in adequate touch with the detail when it went through the House of Commons’ (p241).

<sup>75</sup> On 19<sup>th</sup> September 2005, Charles Clarke had given a very similar speech to the Prison Reform Trust entitled ‘Where next for penal policy?’, emphasizing strongly the rehabilitative goals of prison (Clarke, 2005a).

<sup>76</sup> For each mention of ‘crowding’, I read the context in which it had been mentioned, and recorded the implied sense of whether crowding was seen as a demand-side or a supply-side problem. If the speaker, for example, mentions the term ‘crowding’ in conjunction with arguments for building more capacity or not having enough capacity in the system, I coded this as a supply-side interpretation of crowding. If, on the other hand, crowding was mentioned in conjunction with arguments about excessively large prison population or inability to reduce the size of the prison population, I coded this as a demand-side interpretation. Often, it was not possible to discern either way, in which case, I coded this as neither one nor the other. Sometimes, both senses were implied, in which case, I coded this as both.

<sup>77</sup> One former Conservative minister said ‘we had a particularly prickly Lord Chief Justice in the shape of Geoffrey Lane, who was extremely lucky to even talk to the Home Secretary. Understandably, they were anxious about their independence and all that.’<sup>[#108]</sup>

<sup>78</sup> Kenneth Baker writes ‘one of the major obstacles to reform within the prison system in fact was the Prison Officers’

Association itself. They supported practices which led to inflexibility and over-manning' (Baker, 1993, p456).

<sup>79</sup> Section 127 of the 1994 Criminal Justice and Public Order Act reads 'Inducements to withhold services or to indiscipline. Subsection 1. A person contravenes this subsection if he induces a prison officer - (a) to withhold his services as such an officer; or (b) to commit a breach of discipline. [...] The reference in subsection (1) above to a breach of discipline by a prison officer is a reference to a failure by a prison officer to perform any duty imposed on him by the prison rules or any code of discipline having effect under those rules or any other contravention by a prison officer of those rules or any such code'.

<sup>80</sup> As part of Regulatory Reform (Prison Officers)(Industrial Action) Order 2005, the section 127 was removed in respect of prison officers in the England and Wales system. This order followed the signing of the 'Joint Industrial Relations Partnership Agreement' (JIRPA) between the Prison Service and the POA which stated that the POA was not to 'induce, authorize or support any form of industrial action by any of its members employed in the Prison Service relating to a dispute concerning any matter, whether covered by this agreement or otherwise'. The POA subsequently gave notice of their withdrawal from the JIRPA which expired on 8 May 2008. Section 138 of the 2008 Criminal Justice and Immigration Act reintroduced a statutory prohibition on inducing prison officers in England and Wales to take industrial action or commit a breach of discipline (CJIA, 2008).

<sup>81</sup> It is important to distinguish here between Permanent Secretaries of the department on the one hand, and the top officials in the Prison Service and NOMS on the other. Interviews with Permanent Secretaries suggest that they have seen their own role as one of looking after the relationship of their ministers with the department and the top operational officials, and in this sense it is reasonable to see their interests as synonymous with the interests of their senior minister.

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## *Chapter 6*

### **Top officials, and the interface between political and operational**

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*The pressure of numbers means that everybody in the organization has to focus on management of the population. Some of the most talented civil servants I have worked with have been in the Prison Service, but they were constantly being asked to spend their time thinking about how to manage the population rather than applying their talent to thinking about things like rehabilitation.*<sup>82</sup>

Attention turns in this chapter to the implications of constrained autonomy for senior officials.<sup>83</sup> How have these important actors perceived their own ability to affect capacity stress? Clearly, senior officials do have influence. As we have seen, reliance of ministers on senior officials to deliver a quiet and stable prison system means that they cannot be overlooked or ignored as some critics have suggested.<sup>84</sup> It seems that accounts which characterize senior officials as having little influence over ministers tend to underestimate the *de facto* influence which they wield in managing the prison system. On the other hand, senior officials are civil servants and are there to do what ministers want them to do. Attributing too much influence to top officials will tend to under-estimate the effects of political accountability.

This challenge of managing constrained autonomy is therefore integral to the role and skills of the top officials. They must find ways of balancing the multiple pressures on them, from above in their interactions with ministers, and from below, in shaping and controlling the system. We find high degree of fatalism amongst top officials in terms of their perceived ability to impact capacity in a politicized and managerialized prison system. In the first section, I clarify some of the key public management changes which

have determined the structure and context in which officials must operate. This highlights a strengthening of operational experience at senior levels. I then discuss two key aspects of managing capacity stress in the system – shaping the prison estate and managing the population. The final two sections examine various aspects of constrained autonomy as perceived by top officials.

## **6.1 The shift towards managerial and operational cultures**

There is something about the public policy of prisons that it has tended to produce a tradition of strong personalities in the top administrative roles. Historical accounts have brought to life the impact of these senior officials in shaping values, design, structure, and cultures of the system (Hobhouse and Brockway, 1922; Fox 1936 and 1952; McConville, 1981). Names such as Joshua Jebb (1850 to 1863), Edmund du Cane (1877 to 1895), and Evelyn Ruggles-Brise (1895 to 1921) are all in their own way are associated with key periods of development of the modern prison system since the 1840s.<sup>85</sup> Indeed, the history of the system is told in terms of the bureaucrats, autocrats, and reformers who have presided over it.

The influence and efforts of senior officials must be seen however in the context of the systems in which they were operating. In his paper on Du Cane, for example, Tibber (1980) describes his ‘autocratic and military manner’, as well as the continuous tension which existed between him and Home Office civil servants over the autonomy and independence of his Commission.<sup>86</sup> Du Cane was much criticized for the manner in which he ran the system, yet Tibber seeks to redress the balance by ‘illustrating how frequently Du Cane found himself at variance with, and frustrated by, the hierarchies within which he operated’ (p15). Constrained autonomy is not a new concept!

Du Cane’s predicament provides insight into the kind of ‘culture clashes’ which have shaped constrained autonomy for senior officials throughout history. At the heart of the cultural equilibrium we find the hierarchical and rule-based civil service culture of the Home Office (and also the Treasury). Against this, opposing cultures have operated in countervailing ways. Military cultures have cut across those of civil service. As a former military man, Du Cane’s style was seen as a ‘red flag to a bull’ for civil servants (Tibber, 1980, p11). Indeed, after his resignation in 1985, he was replaced by an Eton and Oxbridge educated career civil servant, Evelyn Ruggles-Brise, no less a reformer but

also a safer pair of hands in terms of his civil service credentials. We have also seen how managerialist cultures have cut across those of established civil service (Jenkins, 2008). Also, the operational cultures of running prisons have also posed challenges to the more ‘rarefied’ cultures of Whitehall and Westminster.

By 1979 the administration of prisons had been through a process of consolidation and reintegration back into Whitehall civil service culture, as the Prison Department of the Home Office.<sup>87</sup> Throughout the 1980s, the Prison Board was predominantly made up of career civil servants, led by the Director General Chris Train, described by interviewees as an ‘old-fashioned Whitehall mandarin’,<sup>[#110]</sup> and ‘the first modern manager of the prison system’.<sup>[#111]</sup> Senior officials from that era reflected on what seemed to be a much greater freedom to bring together experts and develop reformist penal policy. As one top civil servant described:

I had an extraordinary amount of leeway thirty years ago. I could do an awful lot. I did it with governors and other staff. We had ownership of it. We thought it out together. I looked after the bureaucratic side of that...making sure it was in the law and that minister weren’t going to be upset. There is very much less of that now than I was able to enjoy.<sup>[#112]</sup>

Former ministers and civil servants tended however to resist ‘rose-tinted’ reflections from that era.<sup>[#113]</sup> <sup>[#114]</sup> The late 1980s was a period of extreme crowding and unrest in the prison system. Train himself wrote in his forward to the 1987 Prison Department annual report of a ‘nightmare-like sense, felt more sharply than ever before at the top of the Service [...] of all running and never catching up’ (PD, 1987, p1). Senior officials, however, also reflected on the broader mix of civil service and ‘prisons people’ on the Prisons Board under Train’s chairmanship, and a sense of optimism about developing policy to tackle crowding.<sup>88</sup> An experienced former governor also reflected on this mix of intellect and experience.

I don’t think there is anything wrong with a bit of serious intellect coming into the system. Because I do think that some of that is missing now. I think there were huge benefits in some of those people coming in.<sup>[#115]</sup>

**Table 6.1** summarizes the basic changes over thirty years. As we have seen, the early 1990s was a period of upheaval, disruption, and change in the system. The creation of the Prison Service as an executive agency of the Home Office, and the appointment of

chief executive Derek Lewis from private sector, challenged existing equilibrium between civil service and operational cultures. Lewis' account of the general state of management performance in the system is damning (Lewis, 1997). Indeed, the tension between the role of modern chief executive and civil servant answerable to ministers led eventually to Lewis' resignation in the aftermath of the high security escapes 'fiasco' in 1994 and 1995. One experienced official reflected on the implications of greater managerial focus at senior official level.

There's a view around that Derek Lewis got the sack because every time Michael Howard said he wanted to do something, Lewis went back to him with the bill. This is how much your policy will cost, Home Secretary. Have you got the money? <sup>[#116]</sup>

This impact of the Lewis era, and managerialism more generally, illustrates interesting dialectical dynamics. The shock of the escapes from Whitemoor and Parkhurst, and Lewis's very public departure led to the Home Office opting to bring the management of the prison system 'back into the fold' as it were. This appointment reflected a renewed belief at political level that officials with operational experience should be running the system. As former senior official put it:

There was always a cultural tension between people with operational experience and civil servants. But after the prison escapes, and this thing with Derek Lewis, there was a huge swing towards giving more responsibility to people with operational experience. The Home Secretary said we need people who know how to run prisons. Tilt was the first. He was succeeded by Narey who was a prison person but had wider experience in the Home Office. Then there was Wheatley who had no experience in the Home Office. He was prisons born and bred. <sup>[#117]</sup>

**Table 6.1: Summary of key senior officials in the prison system, 1979 to 2009**

<i>Four periods</i>	<i>Top level management arrangements at Director General (DG) and Prisons Board level</i>	<i>Regional or area structures and relevant senior officials included in this chapter</i>
<i>1979 to 1993</i> Prison Department of the Home Office	1979 <b>DG Chris Train</b> (career civil servant). Prison Board predominantly career civil servants.  1991 <b>DG Joe Pilling</b> (career civil servant). More integration of operational and civil service culture at Board level.	Devolved network of regional managers reporting directly to the Prisons Board. Relatively high levels of autonomy for governors, while Board deals with high level policy.
<i>1993 to 2004</i> Prison Service as Executive Agency of the Home Office	<b>1993 Chief Executive, Derek Lewis</b> , recruited from the private sector. Sacked by Home Secretary Michael Howard after prison escape 'fiasco'.  <b>1995 DG Richard Tilt</b> (former governor)  <b>1997 DG Martin Narey</b> (former civil servant with experience of the prison system). Deputy DG Phil Wheatley (former governor)	Area managers introduced in early 1990s, and much stronger hierarchical management from the DG and the Prisons Board down through the prison areas. Growth of national population management from the early 1990s onwards.
<i>2004 to 2007</i> Prison Service as part of the National Offender Management Service (NOMS)	<b>2002 DG NOMS Martin Narey.</b> <b>DG Prison Service Phil Wheatley</b> (former governor)  NOMS civil servants commission prison capacity from the Prison Service. Narey resigns in 2005.  <b>2005 DG NOMS Helen Edwards</b> (career civil servant)	All NOMS senior civil servants, senior management of the Prison Service, and area managers.
<i>2007 onwards</i> Prisons as part of an integrated NOMS	<b>2007 DG NOMS Phil Wheatley.</b>  NOMS Board consists almost entirely of former Prison Service senior officials. Very little representation for probation.	All NOMS senior management, Regional Custodial Managers, and regional Directors of Offender Management (DOM)

**Note:** Permanent Secretaries to the Home Office were also included as 'senior officials' in this analysis. Traditionally, these officials have played relatively minor parts in prisons policy and management, except in their work to oversee and advise the Home Secretary and latterly the Minister for Justice on prisons matters. I interviewed two of six former Permanent Secretaries 1979 to 2009. See Annex C for further details on administrative structure.

From 2003 and the creation of NOMS, we see further tensions between this more intensive operational focus at the top of the prison system, and the wider changes towards a more integrated penal system. This comes in two stages. During the first four years of NOMS, the top layers of senior officials were predominantly civil servants responsible for commissioning and coordinating prisons in conjunction with probation and youth justice. Whereas previously senior prison officials had been responsible for delivering the prison system on behalf of ministers, now they were responsible for providing prison capacity to commissioning civil servants in NOMS. These prison officials therefore found themselves in the role of ‘agents’ answerable to this new layer of senior civil servants as ‘principals’. As these officials have acknowledged, this changed the dynamic, and encouraged rent-seeking behaviour on the part of the Prison Service.

This first iteration of NOMS failed to integrate prisons and probation. With a further round of integration of NOMS from 2007, a new senior management structure was established, which dissolved the administrative interface between NOMS and the Prison Service, and subsumed the prison system into NOMS under a more integrated structure of senior management. Interviewees describe the political and bureaucratic manoeuvring, which went on between the various key actors in prisons and probation systems. The outcome was that the new senior management structure of NOMS, a joined-up agency responsible for prisons, probation, and youth justice, consisted almost entirely of senior managers from the prison system. Senior probation officials interviewed describe this as a ‘coup’.<sup>[#118] [#119] [#120]</sup> Senior prison officials were less inclined to see it in these terms.

## **6.2 The managerial challenge of making the system work**

A key theme already throughout this work has been the extent to which actors emphasize their role in finding ways to make the prison system work. For senior officials, their perception of their predicament is exactly that. They perceive the constraints on them and do their best to manage them. This presents a compelling if sometimes precarious managerial challenge. Numerous interviewees have said as much.

Our instinct is to make it all work. If we are guilty of anything, we have been too successful at making it work. Perhaps things should have fallen over some time ago. But that's not the culture of the organization. Sometimes on a wing and a prayer. Sometimes closer than we should. But we make it work.<sup>[#121]</sup>

At the heart of this challenge, there are two broad options for senior officials in finding ways to keep the system in some kind of manageable equilibrium: either

[1] expanding or shaping the supply of capacity in the system (such as building prisons, 're-roling' them, opening 'makeshift' accommodation, stretching capacity, changing staffing or investment allocations); or

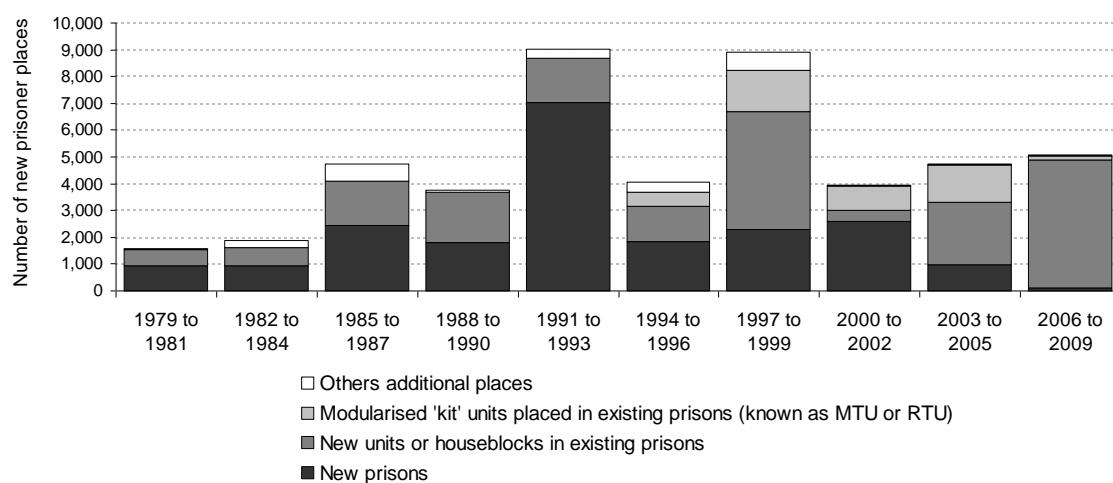
[2] reconfiguring the way in which prisoners are managed in and around, or out of the system (through prisoner transfers or forms of executive release).

The first of these relates to planning and shaping the prison estate to accommodate demand. This is not just a challenge of having enough places, but rather, given the differentiation between types of prisoners and their various needs, it is a challenge of having the right kind of places in the right place at the right time (or near enough). Historically, for male adult prisoners, local prisons have received all intake from the courts and have fed training prisons (see Annex C). For the much smaller female prison population, female prisons have tended to receive and hold onto their intake. There is also the young offender population, which although has been largely separate, in more recent years has increasingly been mixed with adult population. Each of these broad groups will have different security, programme, and resettlement requirements, and these are generally balanced against commitments by the system to keep prisoners as close as possible to their families and local support networks while they are in custody. It is not possible to examine these challenges in great detail here. I simply argue that, for senior officials, the management challenge involves finding a 'best possible' configuration of the estate given the constraints.

We look first at new capacity built over three decades. We have seen already how the prison building programme throughout the 1980s helped to get crowding down to its lowest levels by the start of the 1990s. The dark shaded blocks in **Figure 6.1** show new prisons built. The expansion of the estate up until the early 1990s was done mainly

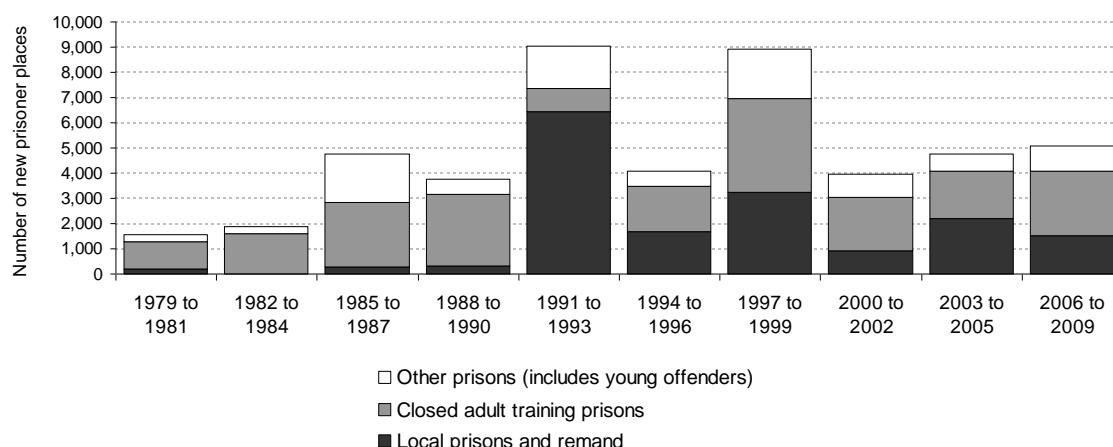
through the provision of new prisons built in the public sector.<sup>89</sup> In addition to new prisons, the Prison Service added new house-blocks in existing prisons and ‘modularized’ units which have provided short term accommodation in ready-to-use form. From the mid-1990s to 2005, these units were used widely across the system as quick response to the rapid and largely un-projected increase in the short-term prison population. From 2003 to 2009, new house-blocks in existing prisons made up most of the new capacity in the system. **Figure 6.2** shows the same data by type of prison.

**Figure 6.1: Number of new prisoner places, by type of accommodation**



Source: Prison Service and NOMS annual reports

**Figure 6.2: Number of new prisoner places, by type of prison**



Source: Prison Service and NOMS annual reports

The rapid rise in the size of the short-term prison population meant that senior officials found themselves having to source new capacity quickly as well as absorb the increase within existing accommodation. At Cleland House,<sup>90</sup> estates planning and emergency accommodation units were tasked with finding new ways to expand capacity at short notice during the second half of the 1990s. All officials interviewed from this period described the necessarily pragmatic, quick-response, and often highly stressful nature of this work. This engendered often quite radical solutions, for example, the purchase of a prison ship ‘The Weare’<sup>91</sup>, as well as innovations with short-term modularized accommodation (NAO, 2005).

Although senior officials talked about the short term value of these ‘emergency’ building solutions, particularly during times of acute capacity shortage, they also acknowledged the long-term obsolescence and costs which were built into the system as a result of this short-term expansion.

The Weare is a good example. That was probably one of the best investments of the time. It cost £6 million and it produced 400 spaces in six months. To build a similar sized prison, it would cost £93 million and take three years to build. So when it was built, it was a great use of public money for two years. But then four, five or six years down the line, when we kept giving it a lifespan, it started to be a misuse of public money. <sup>[#122]</sup>

One former senior official described the culture of continual scoping and finessing of possible capacity options, and the hard-edged pragmatic considerations involved.

My team would come back and tell me this or that local authority have ten sites they’ve put into their strategic plans. Which do you want? I would say, find out which ones we are guaranteed to get planning permission for and I’ll tell you which ones we want. The planning consent is a big issue...and the price of land. <sup>[#123]</sup>

This official also characterized the command-and-control style of negotiations with governors, ‘if I rang up the prison and said I’d like to come and look at the possibility of expanding accommodation, it meant I was coming to see them, if you know what I mean’. <sup>[#124]</sup> The practice of re-roling prisons or converting ex-military installations or hospitals, often at very short notice, has also been frequently used in responding to capacity shortages in super-quick time. Many governors and officials could tell ‘horror

stories', particularly from the 1980s and 1990s, about having to manage very quick conversions of municipal sites into establishments capable of holding prisoners. <sup>[#125][#126]</sup>

The combination of the difficulty of building new prisons in the right place and the exigency of having to find new capacity at short notice has perpetuated the view that prison capacity has been sub-optimally distributed around the country. One former official summed up the overall effect of this, explaining that 'what you can't move away from is the fact the UK prison estate is possibly one of the most disparate almost randomly acquired set of buildings that you could possibly imagine'. <sup>[#127]</sup> Another official explained:

We built in the wrong places. We continue to do so. I handed over my successor a 'red list' of places in which there was no way in God's earth we should build any more accommodation. We came under pressure to deliver more. We built in all those places. And that is where you compound the strategic felony. <sup>[#114a]</sup>

Inherent constraints curtail the ability of officials to shape the estate in optimal ways around geographical distribution of demand. **Table 6.2** shows that London has historically generated by far the largest prison population, but has one of the smallest regional capacities and one of the smallest rates of increase in new capacity over thirty years. Officials described the constraints of finding suitable sites in the London, due mainly to the cost of land, difficulties in getting planning permission, and local political resistance. Regions such as the Eastern and East Midlands have tended to be net importers of prisoners over the years. Whereas regions such as the North East, including Yorkshire and Humber, have tended to be relatively self-sustainable. In nearly thirty years, only two prisons have been built in London, adding a total of 2,230 places, and only 1,030 places in existing prisons (see **Table 6.3**). This confirms what many officials have said about the inherent limitations on development in the London prisons, most of which are inner city establishments, cramped for space inside and limited on the extent to which they can be developed outwards.

**Table 6.2: New additional prison capacity built by region, 1979 to 2009**

	1	2	3	4	5
	Average CNA in 1979	Additional places built 1979 to 2009	Average CNA in 2009	CNA decom.	Population by home region
North East	5,480	<b>10,440</b>	13,600	2,320	12,600
Eastern	2,030	<b>7,010</b>	7,900	1,130	5,500
East Midlands	4,430	<b>4,960</b>	8,540	850	5,800
West Midlands	3,260	<b>4,130</b>	7,390	0	8,700
Wales	780	<b>1,150</b>	1,930	0	4,000
South East	7,150	<b>6,800</b>	12,630	1,320	8,600
North West	6,670	<b>6,040</b>	10,750	1,960	13,000
South West	5,090	<b>2,140</b>	7,230	0	4,700
London	5,090	<b>2,230</b>	6,470	760	18,600
Other not known		<b>2880</b>			
<b>All regions</b>	<b>39,980</b>	<b>47,760</b>	<b>76,950</b>	<b>8,340</b>	<b>81,500</b>

**Source:** Data in columns 1, 2, 3 based on my analysis of data in Prison Service and NOMS annual reports 1979 to 2009. Data in column 4 calculated from columns 1 to 3. Data in column 5 is Population by home region (as of March 2008) from the independent report on the England and Wales prison system by Lord Carter (MOJ, 2007). All figures are rounded to nearest 10.

**Table 6.3: Type of new additional prison capacity by region, 1979 to 2009**

	1	2	3
	Number of new prisons built 1979 to 2009	Additional places in new prisons 1979 to 2009	Other additional places in house-blocks or MTU/RTUs
North East	9	5,430	5,010
Eastern	7	2,850	4,160
East Midlands	4	1,580	3,380
West Midlands	3	1,920	2,210
Wales	1	800	350
South East	6	3,320	3,480
North West	6	2,960	3,080
South West	3	920	1,220
London	2	1,200	1030
Other not known			<b>2,880</b>

**Source:** Data in columns 1, 2, 3 based on my analysis of data in Prison Service and NOMS annual reports 1979 to 2009. All figures are rounded to nearest 10.

If capacity is perceived to be configured sub-optimally, it is the management of the population into, around, and out of the system which must, by definition, compensate. Private sector officials involved in running prisoner escort contracts have pointed out this impact on movement in the system. As one contractor put it:

We notice it in the prisoner transportation bit, because as the population increases, we find we are having to do longer journeys with prisoners. It works out from London.<sup>[#129]</sup>

We have already seen in chapter 3 how tighter centralized management of the national prison population has been an influential factor in coping with the rise in the short-sentence prison population. The shift to the area manager structures in the early 1990s came with much stronger national population management function, which replaced the comparatively more devolved and independent regional structures. Top officials have recognized the benefit and necessity of keeping tight control over the movement of the population. One interviewee described the pragmatic outlook of former Director General Phil Wheatley in this respect.

Phil always liked population management. He took the view that if you controlled the population, you could manage the Prison Service.<sup>[#130]</sup>

From the early 1990s, the Population Management Unit (PMU) began to tighten its grip on coordination and movement of prisoners through the estate in order to maximise capacity in different parts and to ensure that the system had space enough for new intakes from the courts. PMU has coordinated ‘overcrowding drafts’ from local prisons to other local prisons in order to maintain this balance.<sup>92</sup> Senior officials explained the importance of these continual movements to the system over the years in allowing it to function.

We do overcrowding drafts into anywhere. They are an essential part of the business. You have to keep them going. You have to keep the programme going.<sup>[#131]</sup>

Indeed, overcrowding drafts out of London local prisons have been a critical component of this ‘life-support’ mechanism, in particular being able to free enough space in London local prisons on a Friday night to absorb weekend traffic from the courts. A former head

of the PMU explained that ‘you would have to make sure you had beds in London for the following weekend. You would work the system two or three days beforehand’.<sup>[#132]</sup> Many senior officials have acknowledged the logistical and human aspects of the complexity of the population management process. As one former NOMS official explained, ‘the algorithm of where you put [prisoners] around the country is something that is gobsmackingly complicated. The fact that it runs as well and as smoothly as it does is probably one of the working miracles by anyone’s business’.<sup>[#133]</sup> I discuss this significance of the population management influence and strongly centralized line management culture further in the next section.

### **6.3 Autonomy of senior officials to influence capacity**

Public administration and public choice literature assigns considerable ability to ‘bureaucrats’ to shape their world, behave strategically, or adapt to external pressures or opportunities in order to ‘finesse’ their situation (Dunleavy, 1991; Page, 1992). Consequently, far from being an inherent ‘coping’ culture, top officials should be able to influence and shape matters relating to capacity. Far from getting by and just finding ways to make the system work, top officials by definition can place their mark on the system, and in turn the system comes to reflect the values and priorities which are championed by these officials.

Civil servants become skilful operators in terms of finding ways to present ‘finessed’ versions of events to ministers. We have seen in chapters 3 and 4 how constructed performance targets set out thresholds between ‘success’ and ‘failure’, and how these can be deployed by officials to reassure ministers. As one former minister explained, ‘senior officials would like their ministers to be comfortable. Yes minister, we are using the estate very efficiently, and yes minister, we are managing to keep up the number of constructive courses and so on. But they are not getting the educational activity and the constructive time spent they ought to be getting’.<sup>[#134]</sup> He continues, ‘ministers will be fed rather cheerful statistics, such as we have managed to clock up about half an hour more constructive out-of-cell activity than last year. Whatever that means in reality is impossible to tell.’<sup>[#135]</sup>

Top officials have undoubtedly found room to shape the values and culture of the system. Interviewees acknowledged the influence of Martin Narey during his time as

DG in establishing what has become widely known as the ‘decency agenda’. This has done much to put the issue of decency at the centre of prison policy and life, and has linked to other important developments throughout the 2000s such as qualitative measures of ‘moral performance’ of prisons (Liebling, 2004), and more systematic approaches to regime expectations encapsulated in concepts such as the ‘core day’.<sup>93</sup> One current NOMS official characterized this widely held view.

Martin Narey came along and took the view that security could be balanced with decency. Martin came with the agenda, which was then driven forward by Phil [Wheatley]. Those two were a strength. The development of MQPL, embracing pressure groups, bringing people in to do education. Bringing a more professional approach, it all helped stabilize morale.<sup>[#136]</sup>

Top officials have also not been afraid over the years to take a strong line with ministers and their permanent secretaries on population management issues and make clear the limits of the system. As one put it, ‘I would testify to the fact that Phil Wheatley held the line very clearly with ministers. And I would be surprised if you could find any examples of Martin [Narey] giving in on operational capacity’.<sup>[#137]</sup> Many others confirmed this view, particularly the strength of Wheatley over the years to resist under pressure from ministers. As one put it, ‘he accepts that ministers have to be kept reasonably happy, without lies being told. But when ministers need to be confronted by an unpleasant truth, he will confront them’.<sup>[#138]</sup> Another NOMS official explained, ‘the great thing that Phil Wheatley has done is to say that you can’t go on doing that indefinitely. If you put me under more pressure, we will have to go into police cells. And that is something I can do and you can’t stop me doing. And when I do, you will have the police on your back and you’ll have to pay’.<sup>[#139]</sup> Another former top official reflected that ‘Wheatley has taken a firm line on saying the prison system is full. He has turned shroud waving into a much more sophisticated and successful art. Because he has said any more than that is dangerous and I’m not going to preside over it’.<sup>[#140]</sup> One senior official pointed out the strength of such advice up to ministers.

It is quite compelling. It takes a very strong minister to go against that advice. If we do this minister, you are going to have riots in the prison. It’s a very strong minister who says ‘I don’t buy that’.<sup>[#141]</sup>

Interviewees have also pointed out that experienced senior officials who know prison-craft, and can command respect simultaneously in the world of prisons, Whitehall, and Westminster, have been able to wield considerable power over politicians.

The prison service ultimately has government ministers by the throat. The great thing that Phil Wheatley has done is deliver a quiet prison service. When I was in the prison service, you had loads of escapes, riots, it was very traumatic. When I sat in front of the Learmont inquiry, I was asked what is your performance indicator, and I replied the size of the press cuts. The bigger the press cuts, the lower the performance. <sup>[#142]</sup>

The influence of Phil Wheatley in this respect has been mentioned time and time again as having been integral in ordering and quietening the system, and hence shaping the values and priorities along these lines. As one senior civil servant explained:

The figure in the system is Phil Wheatley. When I was governor, I was extremely scathing about most bits of HQ because I worked there, but the one person I didn't ignore was Phil Wheatley. Unquestionable. It was good cop and bad cop with Martin Narey. The person who was directing you was Phil. He is hugely respected and feared by 90 per cent of governors. It has been a Wheatley decade. <sup>[#143]</sup>

This leaves the reader in no doubt about the ability of top officials to have impact on the system. It is confirmed more widely. A former Prisons Board member reflected, 'there is a culture of autocracy. Everybody wants to see what Phil's view will be'. <sup>[#144]</sup> In recent years, particularly during the population crises from 2007 onwards, the impact of Wheatley's power was perceived as much by those above as those beneath working in the system. Numerous officials pointed out that the new Permanent Secretary of the Ministry of Justice, Suma Chakrabarti, had looked to bring back in a career civil servant at the top of NOMS to 'redress the balance', as one put it because 'Phil Wheatley is an incredibly powerful individual. Within the MOJ he is the most powerful DG, with nine tenths of all the resources'. <sup>[#145]</sup>

Strong command-and-control cultures have played an integral part over the last fifteen years or so in allowing top officials to deliver the system. Senior officials and governors have frequently remarked on this prevalent command-and-control culture, and the subtle combination of quasi-autocratic and informal professional pressures that come with it. As one former area manager reflected, 'like all other area managers at that time, you'd feel pressure, and management would say, you've got to find me 50 places [...]'

I'd go to governors, I'd know their accommodation, and I'd say you've got to get 10 doubled up on A Wing there, and on B Wing can you double up another 10...'.<sup>[#146]</sup> As another official explained, 'when there's a crisis on, Michael [Spurr] sends a note saying please explore *every* option to overcrowd'.<sup>[#147]</sup>

As more experienced prison officials have observed, the rationale for command-and-control cultures of management reflects very real pressures to make the system work. Yet, this also reflects 'constructed' norms, which can be used instrumentally by senior officials to finesse the impact of their decisions inside the prison system, and also to reaffirm dominant values and paradigms, which themselves are likely to be a source of power to these officials. In short, top officials are likely to do more of what has been successful for them in the past.

The function of population management provides a good illustration of how dominant values and paradigms can be reaffirmed and perpetuated by the behaviour and rhetoric of top officials. As chapter 3 has outlined, the constant movement of prisoners around the system may be necessary to sustain the current national system at such high levels of capacity. Yet, the disruptive effect of this constant movement of short-sentence prisoners around the system makes it difficult to do the more ambitious rehabilitative work which the system itself professes to aim to do. The point here is that top officials can have the effect of reaffirming these priorities for the organization. Indeed, it is not unreasonable to suggest that top officials are likely to perpetuate perceptions of dependency on systems which themselves form the basis for their own ongoing authority. One current NOMS official reflected on the dominance of national population management.

You create a national system, and we are able to respond to Ministers needs and pressures in real time. You create a kind of urgency and language and mythology around the whole enterprise that it takes an increasingly brave person to say, do you know what, come the 1<sup>st</sup> of November, PMU ceases to exist.<sup>[#148]</sup>

This is a complicated dynamic. I do not suggest here a crude picture of instrumental perpetuation of organizational elites through 'structural choice'. Nevertheless, it is clear from the quotation above and many others like it, that top officials do have autonomy and power to determine prevalent values and priorities of the system. If they are inclined to dismiss or reject the argument that the system should be geared more effectively to

doing rehabilitative work with short-term offenders, it is likely that this will filter into and shape prevailing culture in the system. When a current governor makes the point that ‘there is an element of feeling comfortable and safe under this style of leadership’<sup>[#149]</sup>, we have to accept this at face value to a great extent. But, at the same time, we should also view it as an cultural artefact reflecting the priorities and values which are shaped by those at the top of the organization. A former minister reflected on the dominance of population issues throughout the prison system.

I kept on saying that the key issue is that you must not start this from ‘what is the size of the prison population?’ You must start this from what are your social goals, *i.e.* reducing reoffending, or reducing crime. Or giving justice to the victim. Or other criteria. The capacity of the prison should not be the starting point. But that was the mind-set across the whole of the prison system.<sup>[#150]</sup>

For top officials, this kind of view would be seen as unrealistic in situations of continual capacity stress. The conventional wisdom, often heard from senior officials, that rehabilitative objectives of the prison system are unobtainable as long as the system is run at prevailing levels of capacity may seem like a reasonable prognosis. However, many also acknowledge that crowding and capacity stress over the years have had considerable ‘excuse factor’ for the system not being able to achieve what it would like to in terms of rehabilitation. One former top official reflected along these lines.

One of the realities about prisons for governors and staff is that overcrowding is somewhat of a comfort blanket. It’s the excuse for not providing the sort of service which I always believed we could provide. I did work through a brief period where we started to see falls in the population, and started significantly to reduce the population in one or two establishments, because I wanted to see whether we could make a radical difference to rehabilitative activity. But it was too briefly lived. But it would have been a telling challenge if we had removed the excuse.<sup>[#151]</sup>

Much like senior ministers, top officials over the years have tended to have different views on the extent to which the prison can and should be expected to rehabilitate offenders. As discussed already, the pressures of the management task have been such in the recent years that rehabilitative objectives have tended to get relegated to the bottom of the hierarchy of expectations. This is despite the fact that the rehabilitative objective has rediscovered a surer normative footing since the creation of NOMS.

The reconfiguration of NOMS in recent years has done much to disrupt the command-and-control culture in the prison system. The introduction of regional commissioning of offender management services (under Directors of Offender Management DOMs) in 2007, provided leverage for a more regionally or locally based approach to offender management. Immediately, this created a direct incentive for regional managers to want to ‘shape’ the profile of their prison and probation populations, and consequently, create impetus for holding on to offenders from their own region and displacing offenders from other regions. The power and status of old area managers (rebadged as Regional Custodial Managers) has also diminished as a result. The prison population continues to be managed centrally, along with monitoring and strategic expansion of prison capacity, however, regional commissioning has brought a countervailing dynamic to set against more excessive aspects of command-and-control management.

#### **6.4 How senior officials are constrained by the system**

As we have seen with ministers in the previous chapter, senior officials have developed a keen sense of the constraints on them in terms of their ability to influence capacity in the system. The fact that prisons are not in the right place means that prisoners have to be moved around to compensate. The fact that prisoners have to be moved around means that it is much harder to link them to local public agencies and charities. The fact that offenders experience disrupted services makes it likely that they will end up reoffending. All of these factors are examples of how sub-optimality is rationalized and coped with by those in the system. As one senior official conjectured, ‘Phil Wheatley would say quite openly that if we didn’t have to have overcrowding, we wouldn’t have it. But he is a realist. He knows that prison places are never going to keep up with population pressures, and he’s got to operate with what he’s got’.<sup>[#152]</sup>

Senior officials have frequently returned to the importance of the culture of coping, ‘making things work’, starting from situations which are ‘not ideal’, acknowledging that ‘we are where we are’, and so on. They have also emphasized the need to find a balance between managing the system and responding to the priorities of their ministers and governments. As one peer reflected, ‘the successful civil servant has two characteristics. One is to run something or make policy that is effective. The second

is to be good with ministers. Being good with ministers usually means finding a way to do what ministers want to do'.<sup>[#153]</sup> Indeed, the perception is widespread amongst top officials that it is their job to do what ministers want. As one current official explained, 'I was talking to my boss about some issue, and he said, 'The minister wants it'. And that I'm afraid is the show stopper in our business. If the minister wants it, and it's legal, the minister gets it. And rightly so. We are civil servants and we do what we are told'.<sup>[#154]</sup>

It is interesting how more experienced officials have reflected on the change in the relationship at the interface with ministers over time. Officials in the Prison Department during the 1980s, for example, spoke of 'barely meeting a minister from one year to the next', and one former top manager suggested that he 'did not meet ministers more often than 10 or 12 times a year'.<sup>[#155]</sup> This compares with accounts by top officials in more recent years which suggest a much more hands-on interest in the operational aspects of the system. Senior officials have frequently cited the tendency for what they have seen as 'excessive' intervention or 'meddling' by ministers in operational matters. One experienced governor and former official reflected:

At the NOMS conference this year, Jack Straw spent twenty minutes of this speech telling us not to set up comedy clubs in high security prisons. Nothing could be less strategic than that.<sup>[#156]</sup>

The perception was that ministerial interest heightened dramatically during times of perceived crisis in the system. When there is no crisis, prison capacity issues tend to be part of business as usual. As one former official put it, 'the prison population, when it's fine, doesn't come near ministers. They will get nice, well planned future strategy papers and it's a reasonably ordered situation [...] During a population crisis, it's very different. Ministers were involved in weekly crisis meetings. Daily, weekly, suddenly everyone wants to know the daily figures. The whole system cranks into white hot gear'.<sup>[#157]</sup> During these population crises in recent years, the issue has reportedly been closely monitored by No 10. One official reflected that 'the level of political interference in the Prison Service got to a stage where the Prime Minister had an update with his porridge every morning'.<sup>[#158]</sup> Another former NOMS official described the process of keeping the Home Secretary up-to-date with the latest capacity situation.

I used to get the numbers every morning. The Home Secretary wanted me in the next office to him. He didn't believe that we had it under control. And that we were really doing everything we could. So I thought how do we do this? We set up a huge roll of paper round the wall of the office. And wrote the numbers on it every morning with the increase. When he saw this, he said that's what I want to see. I've still got a bit of it. <sup>[#159]</sup>

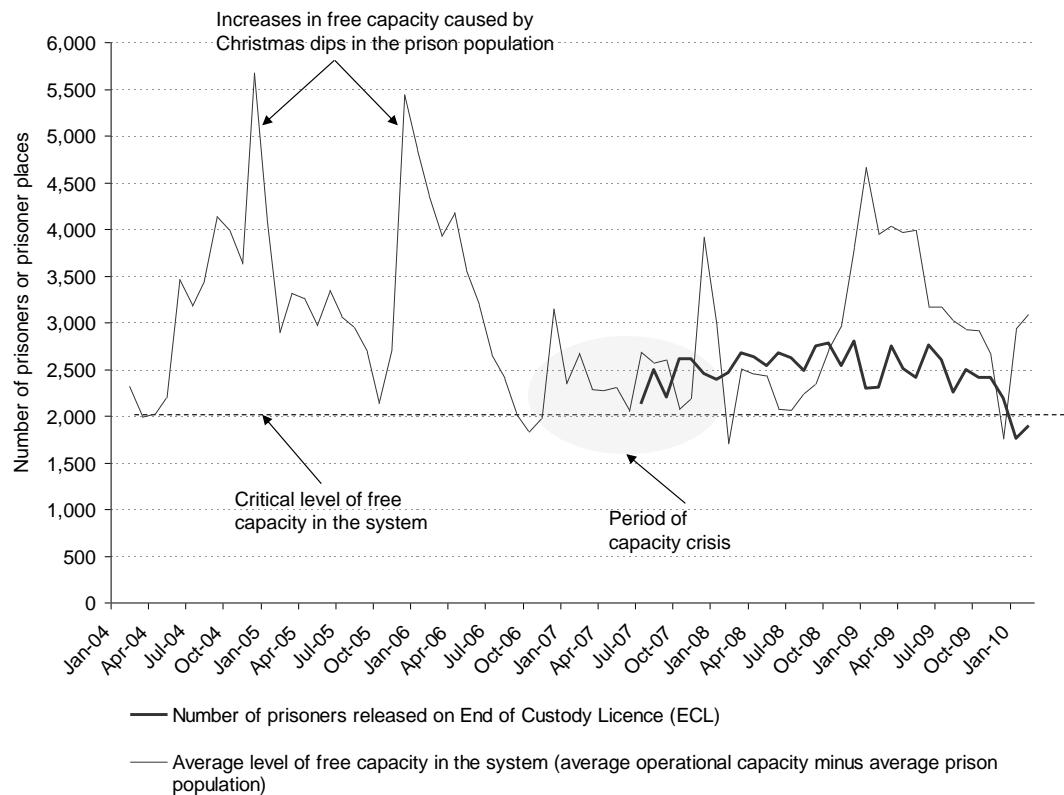
Senior officials responsible for managing the population during times of high pressure have described intensely stressful and close-run situations. In recent years, the system has operated with a planned capacity headroom or slack of 2,000 prisoner places. <sup>[#160]</sup>

**Figure 6.3** below illustrates the problem of unexpected fluctuations in demand for capacity and the potential risk of running the system with inadequate levels of usable slack. During the capacity 'crisis' of 2007, the predicted 'Christmas dip' did not occur and the system was forced to operate at levels perilously close to full capacity. This explained the use of police cells in 2007 shown in Figure 3.7, and the introduction of the End of Custody Licence (ECL),<sup>94</sup> a 'pressure valve' mechanism for releasing short-term and low-risk prisoners out of the system on 18-day early release in order to maintain the delicate capacity balance in view of new prisoners entering the system. It is at this tightly-managed level of equilibrium that the system has worked in the last few years, partly relying on intensive and proactive movement of prisoners around the system, as well as reactive use of small-scale yet vital early release schemes.

Senior officials described the intensive crisis management approach to handling the population pressures during the introduction of ECL. It is clear from this analysis that ECL was a pragmatic demand-side response to a potentially unmanageable build up of capacity stress. This illustrates also the potential misalignments between what Home Secretaries are saying in public about their own ambitious aspirations for the system, and the reality for senior officials of finding ways to cope with the pressures of day-to-day population. One top NOMS official reflected on the speech by Home Secretary Charles Clarke in September 2005 which majored on putting rehabilitative goals at the centre of a strategic approach (Clarke, 2005a).

When the Home Secretary stood up and made a speech saying that he was going to manage the prison population down, the point I remember was that it was never clear how he was actually going to do that [...] It didn't feel great because the projections were already starting to do adrift<sup>[#161]</sup>

**Figure 6.3: Estimated ‘headroom’ capacity in the prison system, and rates of executive release under End of Custody Licence (ECL)**



Source: My analysis of Prison Service and NOMS data on prison population, CNA, and numbers of prisoners released on ECL.

As shown in Figure 6.3, the missing Christmas dip marked the beginning of an acute capacity shortage in the system, brought about largely by the sudden increase of foreign national prisoners entering the system. This acute period was described by this official as a ‘like being in the eye of a perfect storm’.<sup>[#162]</sup> And as the graph above shows, the use of executive release measures allowed the system to ride out this storm throughout 2007.

This period in the management of prison capacity illustrates the inherent challenges for senior officials in responding to changes in ministerial priorities. It also illustrates how changes in the nature of the pressures of the system can shape the range of options available. As outlined above, Charles Clarke had made his speech emphasizing the need for strategic focus on the rehabilitative goals of prison, and had also publicly voiced his reluctance to build new prison capacity in response to increasing population pressures. Officials describe a period for three or four weeks in the run-up to May 2006 when the prison population was rising by 600-a-week, and the prospect of

demand-side strategic action looked unworkable. During that same month, Charles Clarke was replaced as Home Secretary by John Reid, who brought to office an entirely different view towards rehabilitation and restricting the growth the prison capacity. As the system was moving towards this ‘perfect storm’, officials described a sense that it would be inevitable that they would have build new capacity at some point in the near future. Reid managed to secure funding for a further 8,000 prison places as part of the next Treasury spending review, and did so in a no-nonsense pragmatic style by all accounts.

We were told in no uncertain terms. And to this day, it has been the minister’s priority. John Reid sat there and said I don’t give a stuff about rehabilitation. You find space to put them in. When push comes to shove, that’s where any Home Secretary is. And you can see why. <sup>[#163]</sup>

The research has surfaced many other examples of this programmed need to finesse and work around political uncertainties. Many officials have been able to identify occasions when they had put the case to a Minister for a certain course of action, only to have the Minister decide otherwise, often at the last minute or in a way which compromised these officials’ own position. As one former official described, ‘I remember going into a meeting with one minister having made the suggestion that we should close a particular prison. I had thought that he was in agreement. But half way through the meeting, he told the local politicians present, that this prison wouldn’t close. At the end, he shrugged his shoulders at me and said ‘I’m sorry, that’s politics’. ‘Fair enough’, I said. ‘I’ll go away and make that one work’. <sup>[#164]</sup>

Another example involved a Labour minister, who having agreed with officials to market test clusters of prisons, at the eleventh hour and to the complete surprise of senior officials, went back on this decision in the meeting with the POA. As one official closely involved suggested, ‘effectively [he] threw it up in the air and decided to look at it all again [...] You don’t know what happened. Had the PM said you’ve got to do a deal with the POA? If he believed he could do a deal, he was sadly delusional. As an official, you don’t always see what is going on behind the scenes. It came out of the blue for us’. <sup>[#165]</sup>

Most senior officials interviewed have been able to recognize the potential merits of thinking strategically about the system over a much longer term. Indeed, it has been

possible to track down examples of internal analysis and documents which suggest attempts by officials to project fluctuations and shape the prison estate accordingly.<sup>95</sup> In recent years, NOMS has made public for the first time an estates strategy which outlines some kind of long term plan for prison capacity (MOJ, 2009). These same senior officials have however been sceptical about the viability of such strategizing in uncertain political environments.

There are all sorts of reasons why ministers might not like an estates strategy. It's a political minefield. If the strategy is specific about where building is going to take place and where closure is going to take place, then each of those is a local political explosion in the making. That and the constant day-to-day of running the system make it difficult to do proper strategy over a decent period of time'.<sup>[#166]</sup>

Others have picked up on the tendency for senior officials to regard development of a comprehensive medium to long term estates strategy as something which is too difficult to do in a political environment, and therefore something for which responsibility is continually abrogated. One former Prisons Minister put this succinctly.

If it was a well-run private company, it would have an important unit, there would be strategic planning, what is our market going to be like in five years time, how are we going to serve it, what are the developments and inventions. Lots of private sector companies get it wrong and go out of business. But at least they know that they will go out of business. The Prison Service knows it will be in business so long as ministers want them to hold people sent by the courts. They feel powerless in that grip. How do you plan with any confidence and depth unless you have the responsibility. You don't do it. You might muse on the subject. And say it might be nice if such-and-such. But you don't do that hard thinking, and come to the conclusion of a policy you are going to stand by...if you don't have the responsibility.<sup>[#167]</sup>

Indeed, senior officials have been able to see the merits of trying to reshape the distribution of prison capacity to reflect more closely the distribution of demand across the country. However, the imperative has been to make sure that the system remains stable and politically quiet. As one official reflected:

The top management have been hidebound by these pressures. Keep it safe. Keep it stable. Let's not embarrass the ministers. Rather than is there a more effective way of doing this. Looking at what it costs the country. This is what I tell you with all my experience and so on. It feels as though this kind of thing has been on the back burner for some considerable years'.<sup>[#168]</sup>

For senior officials, the political constraints on their ability to manage and shape the system therefore appear very real. As the quotations and examples in this section have tried to show, there is a strong element of coping in their role, and in calibrating and adapting their own efforts to the inherent uncertainty and changeability of their predicament at the interface with the political domain. It is easy to see how top officials can feel powerless and unable to really shape their policy domain. It is however also easy to see how this can lead to incremental change or doing enough to get through acute crisis situations and see what things are like on the other side. In terms of their professional ethical worldview also, incremental change allows civil servants rationalize things that they would rather not do as things which are acceptable given the situation.

## **6.5 Conclusions**

We have seen in this chapter the complexities inherent in constrained autonomy of senior officials. Looking at the issue over thirty years, it is important to factor in change in the public management context in which officials have operated, and the culture clashes which have shaped the predicaments they face. Key to this change has been a gradual integration of traditional Home Office civil service cultures with operational and managerial cultures in the prison system. Just as we have argued that managerialism has done much to strengthen the performance of the system over the decades, it has also done much to strengthen the hand of operational managers with prisons background vis-à-vis ministers and their departmental staff. Politicization of the prison system also appears to have fed into this greater emphasis on having experienced operational managers at the top of the system.

In dealing with the pressures of crowding and capacity stress, senior officials have continually had to respond to the managerial challenge of making the system work. In planning and shaping the physical estate, we have seen how officials have found ways of optimizing existing and new capacity, while dealing with inherent political and practical constraints. Similarly, in managing the population, senior officials have sought to find ways of compensating for an ‘imperfect estate’ by moving prisoners around. Centralized population management has provided ‘life support’ to the system to allow it to mitigate problems of geographical and functional imbalance in demand and supply.

We have seen also senior officials are constrained by political choices and actions. Indeed, the managerial challenge of running the estate is carried out in an inherently political environment, and this perpetuates a sense of fatalism and a need to maintain as much reactive flexibility in the system as possible. Senior officials interviewed have consistently pointed out that crowding and capacity stress are determined by political choices which are taken above their level by ministers and governments, and they are inherently limited in the extent to which they can influence these choices. As one former top official put it:

From the Treasury's point of view, if you spend in one area, you don't spend somewhere else. And essentially that is a political decision, so eventually they become political decisions, they are fixed between the people who have power. If you have a minister who has power, you do better than one who hasn't. So actually Michael Howard probably had quite a lot of power at one point. Jack Straw in the early days probably had power. Charles Clarke had very little power because he famously did not get on with Gordon Brown. He was never going to have any power with the Treasury. Neither did John Reid. The point is that you need to start analysing the politics, because the politics eventually decides what happens. Not the worthy work of officials.<sup>[#169]</sup>

The creation of the Prison Service as an executive agency provided more defined incentive for senior officials to focus on running the prison system, delivering against performance targets, and to separate themselves from prison policy or the politics of prison. This has accentuated the tendency for senior officials to see their predicament as subject to the uncertainty and unpredictability of political choice. This has accentuated an approach of maximizing performance within the confines of the political agenda set out by the minister.

Despite these inherent political constraints, we have also seen how top officials have been able to have considerable influence, indeed power, vis-à-vis departmental officials and ministers. In increasingly politicized environments, senior officials have benefitted from being able to deliver a quiet and secure prison system, as well as one which can demonstrate improving value-for-money and progress against various performance targets. Within this we have seen how they have been able to create and sustain influence, for example, Narey's championing of decency and rehabilitative programmes in prisons, or Wheatley's unquestioned power and autocratic management influence at the top of the system which has been a major part in 'sorting the prison

system out' over the last fifteen years or so. For many experienced senior officials, this tightening of management and performance in the system has been the legacy of the 'Wheatley era'. It has been an operational legacy. It has brought the system to a point at the end of the 2000s where it can sustain systemic crowding and capacity stress while at the same time perform satisfactorily against all or most of its targets.

It is clear therefore that, over the years, the styles and priorities of top officials have shaped and reflected the particular dynamics of the prison system during that era. A looser and less politicized environment around prisons throughout the 1970s and 1980s may be seen as allowing greater scope for a mix of civil service and operational cultures in the development of prison policy. As we have seen however these years cannot be seen in halcyon terms. The state of prisons and the prison system throughout left much to be desired. Indeed, it was managerialism and focus on operational aspects, which contributed greatly to improving conditions and performance in this respect. Yet, at the same time, the combination of politicization and managerialism has proved effective in winding the system tight during the last two decades, and finding rationale to do so. In managing the interface between these two dynamics, senior officials find themselves inherently constrained in terms of their ability to influence chronic capacity stress in the system.

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<sup>82</sup> Former top Prison Service official [<sup>#109</sup>]

<sup>83</sup> I use the term 'senior officials' to refer to the top layers of management in the Prison Service and NOMS. In the Prison Service, this includes the Director General (DG), Deputy Director General (DDG), Prisons Board members, and first tier regional directors or managers. From 1979 to 1991, this includes Regional Directors. From 1991 to 2007, this includes area managers. From 2007 to 2009, this includes area managers, Regional Custodial Managers (RCM), and Regional Offender Managers (ROM), and Directors of Offender Management (DOM).

<sup>84</sup> Jenkins (2008) reflects on the tendency across government for Ministers to 'ignore the civil service' and for civil servants to 'find themselves outside the centre' (p188). Such pessimism is echoed by critics writing on the prison system, for example, Lacey (2008) identifies the tendency for governments to 'ignore the advice of technically neutral civil servants whenever this is judged to interfere with the chances of electoral success or expediency' (p72).

<sup>85</sup> The dates in parentheses indicate the years during which these individuals held key positions in the administration of prisons in England and Wales. **Joshua Jebb** was a Royal Engineer, who was appointed Surveyor-General of prisons in the late 1830s in order to advise the government on design and construction of new prisons built during the 1840s. He was involved in the new 'radial model' design of Pentonville prison, subsequently replicated in many other prisons built during the Victorian era. He was appointed as the first Chair of the newly created Board of Directors of Convict Prisons in 1850 and also served as Surveyor-General of convict prisons until his death in 1863. **Edmund du Cane** was the first Director of the Prison Commission, set up in 1877 to oversee prison system in England and Wales. Formerly a Royal Engineer, he was known for his 'autocratic and military manner' (Tibber, 1980, p12), distrust of the civil service (p13), and pragmatic focus on reform and deterrence aspects of prison (particularly the 'separate system'). He resigned in 1895 after the Gladstone Committee declared the 'separate system' outmoded, and moved towards more prisoner association and remission for good behaviour (p15). **Evelyn Ruggles-Brise** was his successor as Chair of the Commission in 1895 until 1921. Ruggles-Brise was an Eton and Oxford educated civil servant, former

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Principal Private Secretary to various Home Secretaries. He created the first penal facility for young offenders, and founded the regime known as the 'borstal' system.

<sup>86</sup> Tibber (1980) writes 'In a private letter from the Treasury, WH Smith (Secretary to the Treasury) wrote to Cross warning him not to 'mention DuCane by name as he is a red flag to certain people here. Unfortunately the incident was typical of the problems Du Cane had as he tried to make the new prison administration envisaged by the Act of 1877 a reality. More often than not opposition came from within the Home Office itself for Du Cane was trying to isolate a particular department traditionally the responsibility of the Home Office and to make it autonomous. Du Cane's principal opponent was the Permanent Under Secretary at the Home Office, Godfrey Lushington' (p11).

<sup>87</sup> The creation of the Prison Commission as part of the 1877 Prisons Act marked what is widely seen as the beginning of a national prison system. This Act brought county and borough prisons under the administration of the Home Office, in the form of a Board of Commissioners of Prisons. This performed parallel functions to the Board of Directors of Convict Prisons. The merger of the Prison Commission with the Board of Directors of Convict Prisons took place in 1898, and consolidated control of all prisons in England and Wales under central leadership under the direction of the Home Office. The Commission was then fully incorporated into the Home Office as the Prison Department in 1963.

<sup>88</sup> Former senior civil servant David Faulkner describes a decision by Home Secretary Douglas Hurd to 'intensify efforts to control the prison population and place limitations on sentencing' (Faulkner, 2006, p114). A 1988 Green Paper 'Punishment, Custody and the Community' was published, followed by 1990 White Paper 'Crime, Justice and Protecting the Public'. Faulkner describes this as the 'subject of intensive consultation with the criminal justice services, voluntary organizations, academic criminologists, and tentatively but with increasing confidence, the judiciary' (p114).

<sup>89</sup> See Matthews (1999) for a detailed discussion of this prisons building programme. He writes 'the various Conservative governments between 1979 and 1997 sponsored the largest prison building programme in England and Wales since the nineteenth century. It also instigated a major refurbishment programme, designed to end the practice of slopping out and to improve conditions, particularly in some of the more dilapidated local prisons. The instigation of this programme was met with criticism from both fiscal conservatives, who objected to the enormous costs involved, and liberal penal reformers, who saw the expansion of prison estate as a mechanism for encouraging the increased use of prison' (p138).

<sup>90</sup> Cleland House was Prison Service headquarters in Victoria, London, until summer of 2010.

<sup>91</sup> The Weare prison was purchased from the US and towed across the Atlantic and moored in Portland Harbour. It formed part of the England and Wales prison system from 1997 for eight years. It operated as a closed training prison with CNA of around 400. It was decommissioned in March 2005, and sold to oil firm for use in Nigeria.

<sup>92</sup> See Table 3.4 and related discussion for further details on overcrowding drafts.

<sup>93</sup> The 'core day' sets out a standardized schedule for all prisoners in local and closed training prisons. For weekdays, Fridays, weekends, schedules are coordinated across the estate so that regimes are as similar as possible across different prisons of similar types.

<sup>94</sup> End of Custody Licence (ECL) was discontinued in March 2010, largely for political reasons, in the run-up to the general election.

<sup>95</sup> See for example the extensive document produced by the Joint Working Party on Prisons in Greater London (JWPP, 1972). This was the result of two working parties set up in the Autumn 1972 involving a wide range of relevant authorities to examine the 'future provision of penal establishments in the South East in land use terms' (p1). The Home Office also carried out operational and modeling analysis for prisons throughout the 1970s, see, for example, reports on Simulation of the Flow of Prisoners Through the Prison System (HO, 1976) and Programming a Prisoner Transportation Algorithm (HO, 1979b). In January 1993, the Home Office published a report on Local Economic Impact of New Prisons in Urban Areas (HO, 1993). In 1998, the Department of the Environment, Transport and the Regions published guidance to local authorities on Planning for Future Prison Development (DETR, 1998).

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## *Chapter 7*

### **Governors, staff, and strategies of local adaptation**

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*Mark Twain said that everybody complains about the weather but nobody does anything about it. Overcrowding is a fact of life. We have no control over it. We literally cannot influence it. Occasionally the DG has said things like 'it's dangerous' or 'we are not able to do our job properly'. We expect them to say those things because that's a way of getting resources. Our job on the shop floor is to get on and look after people we've got as best we can.<sup>96</sup>*

For most prison governors,<sup>97</sup> the idea that they and their staff can be implicated in explanations for crowding and chronic capacity stress (CCS) seems far-fetched. Conventional wisdom says that these are the concerns of 'high politics' and decisions made at much higher levels, and that the predicament of governors and staff is to cope with the stresses incurred and make the system work. Clearly, however, governors and staff form an important part of the prison system. Surprisingly, there are signs that they have been under-researched, despite the fact that their roles embody interesting and complex dilemmas of public management.<sup>98</sup> Governors face challenges of constrained autonomy in much the same way as ministers and senior officials, and their choices and actions are therefore vital components of keeping the prison system as a whole in some kind of manageable and acceptable equilibrium. As Bryans (2007) writes:

There will always be a tension that exists between control from above in the form of rules, regulations, and directives, and the governor's autonomy, and the need for flexibility and personal influence in managing prisons, because of the very nature of penal institutions' (p181).

It would therefore seem necessary to at least entertain the idea that governors and staff would impact on the overall characteristic of CCS. If these conditions are, as I argue, symptoms of a whole governance system, then it is justified that we understand how choices and actions of governors fit into this whole system.

This chapter therefore looks at constrained autonomy for governors, and how it fits into place in the overall system. The first section discusses some of the wider perceptions of governors on crowding and CCS, in the areas of population management, cost savings, and physical infrastructure. In the second section, attention turns to the constraints from above on governors, in relation to increasingly managerialized and centralized coordination of the prison system. The third section examines the extent to which governors have had autonomy to shape their institutions, and barriers which governors encounter in attempting to maximize latent capacity in the human resources available in their prisons.

## **7.1 Managing prisoners, cost savings, and physical assets**

It is not surprising that when prison governors, especially the more experienced of them, look at today's prison system, they see a comparatively improved system relative to the late 1970s and 1980s. Many governors reflected on the inadequacies in the system throughout these decades, what they saw as indecent and brutal conditions, dysfunctional regimes, lack of respect, and widespread rent-seeking behaviour by prison staff and management. One experienced former governor suggested that governors should not complain about the current state of the system in light of what it was in the past.

What I would say to 'complaining' governors is look me in the eye and say that the experience for a prisoner now is worse than it was in 1979. I do not accept that. I can remember Manchester in 1983, the smell of excrement and urine at slop out, the abysmal food that we served, the relationship between staff and prisoners where every second word was 'fuck', prisoners weren't treated with respect, they weren't treated with decency, visitors were treated as if they were prisoners as well, the place was run for the benefit of staff earning massive amounts of overtime at fantastic cost, where racism and brutality was rife. <sup>[#171]</sup>

In the mid-1970s, Leeds prison was ‘so overcrowded that the toilets didn’t flush and we used to have the fire brigade come and pump away material from sluices’.<sup>[#172]</sup> About Leeds prison in the late 1980s, another governor reflected.

I worked at Leeds as an officer in the summer of 1987. I was on B wing, every prisoner was three to a cell designed for one. They came out for exercise if they were lucky. And to get their meals. That was it. The rest of the time they didn’t come out. Slopping out every morning, no integral sanitation. You get three people using a bucket in the corner. Things have improved hugely.<sup>[#173]</sup>

And another governor reflected on the morning regime (or lack of it) in a large urban local circa 1984.

Each landing was called for breakfast. About 1,800 people going for breakfast. Everyone was locked up again. All that took place between 7 and 7.45. At 7.45 staff would go for breakfast and come back around 9. The 7.45 people would clear the yards, as people would throw pots full of shit out of the window. Often as a new person, you would get that job...the ‘shit party’. Come 9, the rest of the staff would sit in tea rooms. Because there was no regime. Prisoners were gainfully employed making rolls or cups of tea for staff who used to sit in these areas playing cards or reading newspapers.<sup>[#174]</sup>

The qualitative shifts in how governors see crowding and capacity stress have been complex and, in some senses, quite paradoxical. For a start, the process of normalization of crowding has been strong over the years. Despite seeing the system as improved in many ways, governors also commonly reflected on this ever-present nature of the problem and an inherent tendency to normalize it and get on with things despite it. One governor reflected:

We found the staff induction booklet from 1973...I could have written it today...the governor back then talked about overcrowding being deeply unhelpful and the biggest problem he was facing. God knows how old you have to be to remember this prison as being not overcrowded. It’s just the norm.<sup>[#175]</sup>

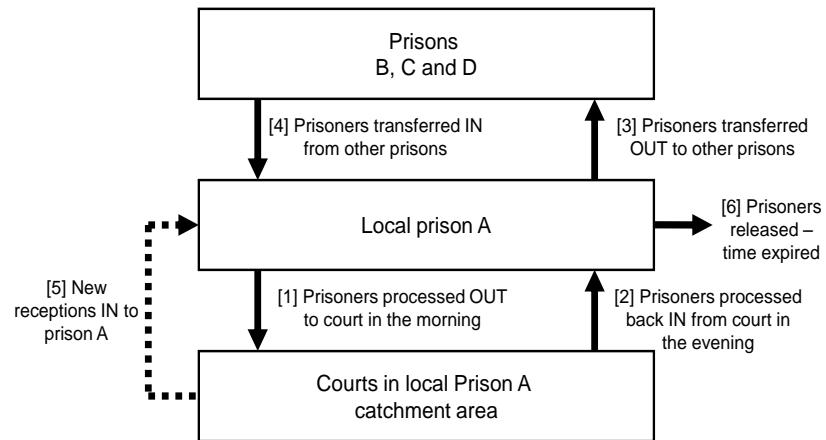
Governors, in fact, remarked that crowding appears so much the norm that it is not something a prison notices until it is not there or has been reduced. As one experienced governor pointed out, ‘when it’s *not* there... that’s when you notice the difference. The last couple of months we’ve had spare capacity here, and it’s been so much more relaxed’.<sup>[#176]</sup> Some governors also mentioned, perhaps ironically, that having slack in

the prison also focused their mind on ‘what the hell all these staff were actually doing every day’.<sup>[#177]</sup>

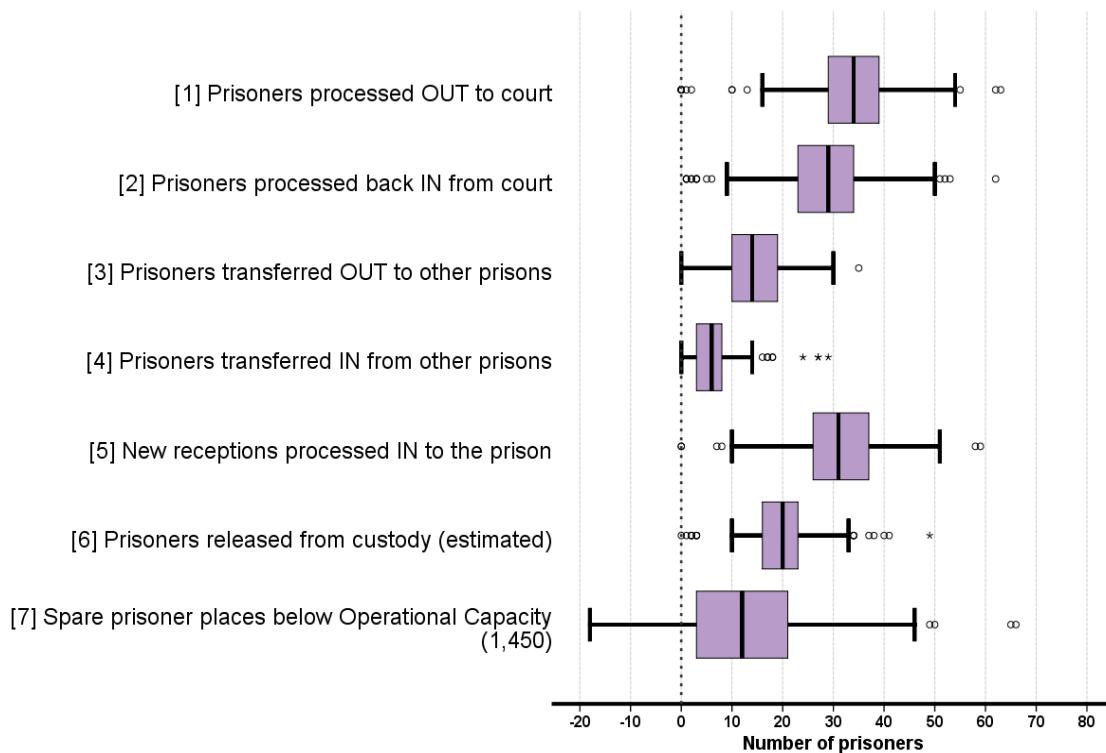
Although governors have been inclined to see the benefits of being less crowded than usual, they have also pointed out that there are benefits to running at close to maximum levels (*i.e.* close to Op Cap). As a group of deputy governors in focus group agreed, ‘happiness is being full...because you know what you’ve got and what you have to do’.<sup>[#178]</sup> For governors in local prisons on the ‘overcrowding draft’ circuit, the worry was that in running with spare capacity, there was a danger that the prison would be destabilized by having to take overcrowding drafts at short notice.

Starting with the issue of population management, we have seen that the national prison system relies heavily on continual movement of prisoners. Some local prisons tend to be more susceptible than others to this continual ‘churn’. Figures 7.1 and 7.2 give an indication of the rate of movement through one of the largest urban local prisons, Birmingham. **Figure 7.1** shows six main flows of prisoners in and out of a large local prison. **Figure 7.2** shows the daily mean number of prisoner movements in and out of Birmingham prison in each of the processes outlined in Figure 7.1.<sup>99</sup> For 2008, the average Op Cap of Birmingham prison was 1,450 prisoners (CNA 1,116). On a daily basis, reception staff at Birmingham processed on average around 35 prisoners out to court each morning, and around 28 prisoners back from court in the evening. (These are not necessarily the same prisoners given that some prisoners leaving Birmingham prison in the morning may return to another prison in the evening, or some prisoners from other local prisons or remand centres may be redirected back to Birmingham after court). Generally speaking, around four fifths of those who leave for court in the morning return to the prison in the evening.

**Figure 7.1: Flow of prisoners processed IN and OUT of a local prison**



**Figure 7.2: Box plots showing average daily movement of prisoners processed IN and OUT of Birmingham prison from January to December 2008**



**Source:** Analysis based on data provided by staff at Birmingham prison

Reception staff also processed in on average around 5 or 6 prisoners per weekday on overcrowding drafts, mostly from London local prisons.<sup>100</sup> The final bar in Figure 7.2 above shows that Birmingham rarely went above its operational capacity during 2008, on exceptional occasions using its segregation unit and healthcare facilities to accommodate surplus demand for places. On average, the prison remained at around 10 places less than its operational capacity – equivalent to running at 99.3 per cent of capacity! One current local prison governor explained the daily logistical challenges of having to operate at levels so close to tolerance.

It does start to get more fraught when you are right at the top of the numbers. Because you are constantly trying to find spaces, put those people from similar religious, cultural backgrounds together. Smokers with smokers. Language with language. That's when it gets much trickier, when there's no space to manoeuvre. It's like one of those puzzles when you have to move the pieces around. <sup>[#179]</sup>

Many governors talked of the difficulties and stresses involved in identifying prisoners to go on drafts, and the soft (and at times, less soft) skills required to get resistant prisoners to walk onto the bus under their own steam without physical coercion from staff (a requirement of escort contractors). As one governor explained, 'it becomes part of life as a local prison. You develop mechanisms for coping with them, making them as comfortable as you can, and getting shot of them as quickly as possible'.<sup>[#180]</sup> As another reflected, 'one of the things we are depressingly good at is conditioning prisoners. To say in the morning, you are going on a bus to the Isle of Wight...and nine times out of ten they do. And on the rare occasions they don't, we make them'.<sup>[#181]</sup> And as a former experienced official from the Inspectorate explained, 'that became part of being a governor. You don't want to do it. You don't like it. Other prisons would have it done to them. But you knew that you had to get shot of ten because you had ten coming in the door. The consequences of that for the way governors then thought about individual prisoners...they did become those pieces on the board that you had to move around just because that was what you had to do'.<sup>[#182]</sup>

Looking for cost-efficiencies in the way prisons are run have long been an important part of governors' preoccupations – more so as managerialism has evolved. As one former governor and area manager in the mid-to-late 1990s put it, 'three per cent was the mantra back then. You would be going round prisons saying, 'do I sniff waste

here?' I was thinking like that. No doubt other governors were thinking like that too'.<sup>[#183]</sup> Current governors have talked about continued emphasis on this imperative for them to take costs out of their operations in the region of 4 to 5 per cent, and more recently 5 to 7 per cent. Governors generally manage to make savings of this kind, although often with some difficulty and systematic streamlining of staff working profiles. As one Cat C training prison governor put it, 'the savings I've had to make in the year or so I've been here, we've done without too much pain. First year was £125k, this year £250k, not small amounts on a budget of around £11 million'.<sup>[#184]</sup> Nevertheless, governors were nervous about increasingly tough savings requirements from 2009 as financial constraints tighten.

Some governors were inclined to be more bullish about the prospects of increased savings, suggesting that there was still considerable room for a more cost-efficient system. One explained it as follows.

This year I was asked to save around £650k, and I'll be saving closer to a million. People think I am foolish, but surely I should be praised and incentivized for bringing costs down. When I sit in front of all the governors in the region and say we need to think of ourselves as a business and strip out all the costs, heads begin to shake.<sup>[#185]</sup>

In most large local prisons, staff costs account for somewhere in the region of 80 per cent of the total budget. The potential for governors to find between 5 and 7 per cent savings year-on-year relies heavily on governors being able to reduce staff numbers, and because of the difficulties in reducing headcount, governors have to rely on staff attrition or early retirement and not refilling these empty posts. As one current local prison governor put it, 'they are saying that you have to reduce the number of managers to show efficiency savings. They have told me that over the next five years, I need to make a saving of £330k. But we'll take it off you this year. How can I make a saving of £330k in one year? I can't do it unless I don't refill vacancies'.<sup>[#186]</sup> Another governor explained, 'in 2008, we got rid of seventeen staff from the books. Attrition, retirement, redundancy. I'm now running short of prison officers, knowing full well that I'll make efficiencies in the future when I don't refill them. The bit I'm running short on will help me reach that target'.<sup>[#187]</sup>

Another important dimension for governors concerns the physical condition of the prison estate, and the availability of capital funds to develop premises, or even do basic repairs to vital facilities. Most governors were realistic about financial pressures on capital investment, and could recognize a general problem of 'capital thinning' as one facing many other public sector areas. Nevertheless, governors expressed worry about the difficulties in getting even most basic jobs cleared and funded. As one Cat C training prison governor explained, 'there is a huge problem with the maintenance budget. I feel sorry for the works team. We are just not properly resourced, capital-wise, maintenance-wise, or staff-wise. It's a huge amount of work just to maintain the prison'.<sup>[#188]</sup> Some were sceptical about the risks of storing up obsolescence for the future in terms of papering over cracks. As one experienced governor of a Victorian local prison explained, 'we are banking up problems for tomorrow on the maintenance budget. If you don't maintain planned maintenance and replace assets at the correct time, if all you ever do is wait for things to break down, then you sow a recipe for disaster'.<sup>[#189]</sup>

Such pessimism may be exaggerated. In my visits to twenty-nine prisons, some governors were able to show me brand new modern facilities such as the kitchens at Brixton prison. Nevertheless, most governors were able to show me at least some fundamental issues with repairs pending such as severe damp, deteriorating plasterwork, roof leaks, and general obsolescence in basic facilities. Talking to a former area manager about these general repair problems, 'the message for years has been that there is no money to refurbish or repair. Unless it is absolutely crucial, to fix the roof or make somewhere safe from fire, the message has been 'don't commit the money'. I would get a chunk of money as area manager, and ask governors for their top five must-dos. The 'nice-to-dos' would never get a look in'.<sup>[#190]</sup> I now move to discuss the perceptions of governors on the extent to which they are constrained by national management of the prison system and prevalent cultures of command-and-control in recent decades.

## **7.2 How governors are constrained by the centre**

Managerialist change has impacted on the role and functions of governors over the years, and also on their perception of their own ability to influence CCS. In his work on prison governors, Bryans (2007) make a typological distinction between broad four

types: chief officers, general managers, liberal idealists, and conforming mavericks (p159). He identifies some 'clear trends' in the balance between these four types.

General managers are increasingly replacing liberal idealists, as the work takes on an increasingly managerial flavour. Conforming mavericks are disappearing as diversity, variation and the governor's ability to shape the prison regime is being curtailed. The number of chief officers is growing as the Service comes to value people who will ensure compliance with orders and instructions (p163).

He writes further that 'governors are now expected to be competent and professional managers who plan and deliver a public service within a set budget and to laid-down standards. They are expected not to be insubordinate, free-thinking, or openly challenge the current approach to prison management' (p169).

Greater standardization and oversight of governors grew out of findings from the 1979 May inquiry, and moves towards more systemic management throughout the 1980s. A 1984 Prison Department circular instruction (PD, 1984) set out a managerial framework for governors and their relationship to the centre, and from 1991, largely in response to the 1991 Lygo report (PD, 1991), an area management structure was introduced for more integrated centralized line management. We have already seen in chapter 3 how the intensification of performance target cultures also characterized the system throughout the 1990s and 2000s. In all of this, the role of governor was undoubtedly reined in, and made subject to much greater standardization and oversight. So much so that by the end of the 2000s, governors commonly equate their roles to that of a store or franchise manager – echoing Bryans' general argument above.<sup>[#191][#192]</sup> Whether this is seen as positive or negative development has usually depended on the worldview of the governor. Many interviewed have looked on this change positively, as part of an inevitable move towards creating a more consistent and cost-efficient prison system. Others have been more inclined to be pessimistic about the constraints on them as 'governing' governors.

As Figure 2.8 has shown, managerialist change, particularly from the late 1990s onwards, has meant that large expenditure items have centralized as headquarters searches for economies of scale, and more consistent and effective services. Contracting for core services and facilities has been a major aspect of this change, from information technology and facilities management, through to prisoner-focused services. Hence

governors have seen their capacity for direct control over core services reduced as it has moved upwards to headquarters. This has, by definition, reduced the scope of governors to impact directly on the actual rehabilitative performance of their prisons. As a former Inspectorate official points out:

If you think over the last ten years, governors are now responsible for things that they can't directly control. They are responsible for healthcare but they don't pay for it, and there is a separate system of governance and management by the Primary Care Trusts. They are responsible for education, but there is a separate system of funding and governance via colleges and what they are learning in skills councils. They are required to meet various accommodation targets and employment targets. They can't do that. They rely upon local authorities and the voluntary sector to deliver all of that. Increasingly they are sitting on top of a system but they don't have the levers in their office. The levers are in somebody else's office. And they have to work that.<sup>[#193]</sup>

We have seen too how centralized control of the prison population can have disruptive effects on the governors' ability to target these rehabilitative services. Governors remarked on the power of population management, particularly in their ability to dictate transfer of short-sentence prisoners through drafts. Pop Man's influence has been felt by governors during times of acute capacity shortage, and they have frequently referred to cases in which their own plans or initiatives had been scuppered as a result of Pop Man interventions. As one governor put it, 'many good things get sacrificed on the altar of overcrowding'.<sup>[#194]</sup> Overcrowding drafts have been a disruptive factor which governors have confessed to be able to do very little about. One local governor described the impact on his establishment's own aspirations for dealing in the short term with prisoners' basic needs.

What you lose are the softer outcomes, things that you would really like to deliver as a governor. We have a number of prisoners who we would be putting through courses, advanced thinking skills, drug rehab, and then we would be told that there is a bus scheduled with space for 20 prisoners who need to be moved out to make room for another 20 prisoners coming in from court. You get Pop Man on the phone and say hold on a minute...these people will benefit on a personal level. They are likely to be free from drugs by the time they get out. 'Don't care'...is the answer.<sup>[#195]</sup>

The most sceptical governors said that they 'could not remember the last time they won an argument with Pop Man'<sup>[#196]</sup>, and that 'challenging the supremacy of Pop Man might

be considered heresy'.<sup>[#197]</sup> Others would talk about how they tend to delegate these conversations to their allocations units, as one put it, 'because I just end up losing my temper'.<sup>[#198]</sup> Despite a healthy level of resignation to the dominance of Pop Man in times of capacity shortage, governors recognized the futility of the 'you will, I won't, you will' style of exchange, and suggested that working constructively with Pop Man often led to mutually beneficial compromise. One former local prison governor talked about his own initiative to transform a wing of the prison into a training wing for prisoners from the region, on the grounds that this would help to keep prisoners close to home,<sup>101</sup> and allow the prison to work more constructively with local agencies to prepare these prisoners for release. Of Pop Man's initial scepticism to this plan, the governor said that 'Pop Man have their own agenda and their own life, and they didn't like me deciding what kind of population I was going to take in the new wing. My argument was that I'm not taking places away from the system as I'm freeing up training places that would have been filled in other prisons. Anyway, after a lot of argy-bargy, we managed to get that in'.<sup>[#199]</sup>

Interviews surfaced a strong element of convention-following, particularly in the way in which governors 'finesse' the impact of population movement on their own prison and staff. Many governors could point to occasions in their careers when they had been faced with a van load of prisoners outside the gate after 'lock out', and a request from Pop Man to open reception and accommodate the prisoners. Governors would talk about a well-established routine of going through the motions of being seen to resist, and then agreeing to accommodate those prisoners. The mix of cultural dynamics and the adaptive strategic behaviour involved in the example below illustrate the complexity of how the system adapts to capacity stress.

During Safeguard,<sup>102</sup> there was a pressure as duty governor to say I'm not going to accept these prisoners. So you'd go through the motions of saying to [the escort contractor], I'm refusing to accept these prisoners. They get in touch with the area manager, and then you get a call from him saying 'you will accept those prisoners'. So you go back to the staff, and say 'I did my best, but we've got to accept them'. You would do that to satisfy the staff. That would become the norm. It would be expected that you would on with those staff to process those prisoners. When it came to it, they would still go through the process as with every other.<sup>[#200]</sup>

Area managers have confirmed this almost standard expectation that prisoners would (and should) be ordered in to prisons in order to avoid having to use police cells or other options. As we have seen in chapter 4, governors and area managers are frequently insistent that they would not sanction crowding above the Op Cap (at least for any longer than one night). This illustrates the role of professional ethos of governors individually to protect their own staff and regimes. As one former area manager put it, ‘when things got very difficult in the last few years, I would get calls from Pop Man asking me to agree to take prisoners into segregations units in London prisons. I remember pushing back on that because it was not right. It was a moral imperative’.<sup>[#201]</sup>

The inclination amongst governors to be seen to be coping has been an important part of this relationship for many decades. Governors talked about this professional ethos to ‘get on with the job’, ‘make things work’, ‘realize that we are not in an ideal world’, and ‘take a pragmatic approach’. By their own admission, at times there is a fine line between resistant and coping responses, and this can be seen as a professional weakness as much as it is a professional strength. One former female governor explained the predicament (with characteristic Prison Service humour) that many governors would face in dealing with excessive numbers. ‘I would be thinking what can I do to mitigate this? I would never think, what can I do to get fifty prisoners out? I would be thinking, where can I put them? If rang up HQ saying things were a bit tense and I wanted to move say twenty prisoners on somewhere else, they would say...Where love? In your spare room? So you would never ask for help in that way’.<sup>[#202]</sup>

There are contributing factors which feed into this widely held perception that governors take a large risk in resisting instructions from senior officials. One important factor is the culture which has underpinned the way in which governors have been promoted over the years. Typically they serve on average somewhere between 18 and 20 months in any one institution, before they are moved on to other establishments. Turnover of governors is therefore seen as relatively high, and appointment of governors is decided at the discretion of area managers and top officials. In this sense, the system is susceptible to the vagaries of informal and personal and personality-based relationships between officials and governors. As one highly experienced observer put it:

It is very personal, the Prison Service. It’s small enough to be personal. There’s only 139 governing governors. So-and-so is a good person. So-and-so is

struggling. It's a small cadre of people. It used to be distinguished by your ability to hold your drink at the Prison Service conference without falling over and ideally without hitting anybody. It's a bit like police. They work shifts. They spend a lot of time with each other. They work in a closed environment. Not a popular job. It has all those characteristics of support, and knowing a bit too much about each other.<sup>[#203]</sup>

The structure of promotion tends to mean that good governors get moved around frequently, and many governors suggest that a 'prison hopping' approach (*i.e.* taking opportunities when they arise) has tended to be the standard way to move upwards. A general rule of thumb for most governors involves dealing with the effects of an '18-month syndrome', whereby the first six months are usually spent learning the establishment and dealing with the legacy of the previous governor, the next six months are spent trying to articulate a new vision for the prison, and the final six months are spent dealing with a staff group who begin to anticipate the governor leaving for another prison. Many governors acknowledged this syndrome. One suggested that 'you probably need to keep governors in post either to gain the benefits or feel the pain of their decisions. It's been a bit too easy to hit and run over the years. The short-termism of posting results in a lack of accountability'.<sup>[#204]</sup> Others pointed out that benign resistance amongst the staff group would also often be based on the expectation that the governor would be gone within 18 months, and would be replaced with another most likely with different approaches and priorities. As one governor put it, 'the staff can play a waiting game, and they know that they have a good chance of winning'.<sup>[#205]</sup>

Governors talked about the culture of expectation that they are able to move prisons often with very short periods of notice. This has linked closely to the practice of moving governors for crisis-management purposes, where tried-and-trusted governors, who have developed reputations for turning round 'failing prisons', are brought in under emergency measures. This reflects again a commonly recognized culture of coping and crisis management over the years. Reaffirmation of certain governors as fire fighters, fixers, or consolidators, for example, feeds into the continuation of this culture, and sustains a perception that this kind of crisis-management culture is part of the culture which sustains the system. As discussed in the previous chapter, such a 'bossist and 'crisis and command' culture is as much constructed by the managers and willing governors, as

it is inherent in the system. One current local governor reflected on the difficulties of saying no to short-notice requests from senior officials.

My first move from [Cat A prison] to [YOI X] was two days notice. I was rung at home on a Friday, and asked what I was doing next week? I thought he was planning to cancel my leave. He said I want you to turn up at [YOI institution X]. You take it as a pat on the back that you are being asked to go into a dodgy jail to fix it. When I was at [YOI Y], to be asked to go to [local prison Z] was quite a compliment. I'm not sure what would have happened if the answer had been 'no'. I'm just not sure. I hadn't tested the waters. That is the culture we live in.<sup>[#206]</sup>

Many governors however recognize their ultimate position as civil servants, and part of the line of responsibility, or chain of command, up to Ministers. As the system is organized, this is seen as the responsibility and obligation of their position. As one put it, 'we are civil servants; we are here to do what the government wants'.<sup>[#207]</sup> Other governors have been less inclined to see this as an important factor, and argue that contentious issues will actually be hammered out in discussion between governors and their senior officials, and that in reality, the culture is less fatalistic than the analysis above suggests. As one current senior NOMS official and former governor put it, 'I don't accept this idea that governors are pawns who are terrified to say no. Governors tend to be quite strong characters on the whole, and they can be quite vociferous when it suits them'.<sup>[#208]</sup>

This leads to a fundamentally important point over the years about the collective professional status of governors, and the extent to which they have been able to influence up the line for increased resources and constraints on the negative impact of capacity stress. Governors interviewed have tended to agree that, as a collective professional group, they had been somewhat beleaguered over the years. Some suggested that the professional cadre struggled collectively to articulate pressures of crowding and resource stress up the line, and as stress has reached acute levels during recent years, there is a perception that 'the centre is less keen to listen to us than they were. There seems to be a feeling in the centre that we are negative, obstructive, and difficult'.<sup>[#209]</sup> This was only partly refuted by officials in the top jobs over the years.

Anecdotal accounts from governors interviewed reflect a collective reluctance to question the judgement of senior management. Numerous recollections of Prison Service conferences depict a muted collective voice of governors from the floor, an observation

picked up by many governors and chief probation officers during NOMS conferences in recent years. As one current prison governor reflected, ‘I remember on a number of occasions at conference, governors being slapped down for being critical in public. Anyone else offering criticism looked at the floor. We sit there and say nothing now. That’s the way it is’.<sup>[#210]</sup> This is reflected in the stringent restrictions on prison governors speaking to the press on ‘national issues’ relating to the prison system.

The reality is that if you are going to trust us to run prisons, million pound organizations, then you need to trust to talk to the press. Fleet St media will tell you that prisons always make the best stories. So it is politically very sensitive. We understand that. But a way of dealing with that is not tell us all we can’t speak to them.<sup>[#211]</sup>

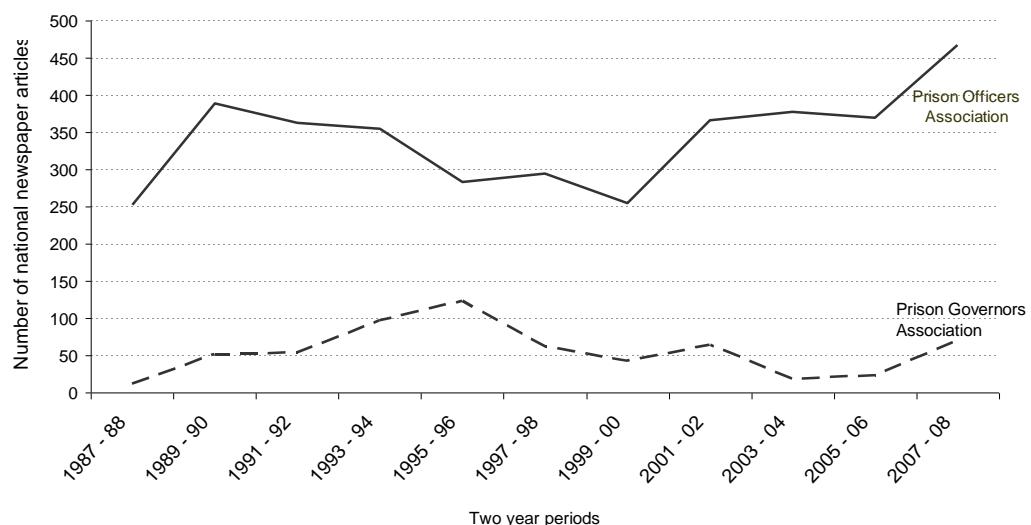
Over the years there has also been a level of distrust amongst governors about the extent to which senior management will support them in making potentially risky decisions. For example, many governors talked about the risks involved in deciding whether to release borderline case prisoners on Home Detention Curfew (HDC).<sup>103</sup> One governor conveyed the sense of uncertainty about likely support from politicians and top officials.

When they introduced HDC, the prediction was that it would take 3,000 off the population. After it had been going a few months, it was realised that it was only taking 1,000 off the prison population, and they were concerned. David Blunkett held a reception for governors at Lancaster House. For free reception and warm talk. He said he understood the reticence towards using HDC, but he could assure people that they would be 100 per cent backed if day release led to an incident, as long as they had gone through all the process, qualifications, and judgments. There was an audible laugh in the room.<sup>[#212]</sup>

Signs of organized presence and political lobbying by governors have been visible since the late 1970s (SCPS, 1978; BAPG, 1979). Governors began to organize through the Prison and Borstal Governors Branch of the Society of Civil and Public Servants,<sup>[#213]</sup> and this developed through the 1980s into the formation of the Prison Governors Association (PGA) in 1987. Interviews surfaced a strong degree of scepticism about the effectiveness of the PGA, particularly in more recent years, to organize and articulate the collective professional views of governors to senior officials, ministers, and society at large. The development of the PGA as a visible and professionally accepted body has, in the minds of the great majority of governors interviewed, been weak and frustrated. Governors generally agreed that it has suffered from little or no visibility, and press

searches over the years confirm that the PGA has a consistently lower media profile than the Prison Officers' Association (POA) (see **Figure 7.3**).

**Figure 7.3 Number of mentions of POA and PGA in national newspapers, and proportions of mentions relating to crowding issues<sup>104</sup>**



Source: Nexis UK national newspaper database.

For many governors, the PGA has increasingly fulfilled the role of a union organization rather than something more akin to a professional association or royal college. This had led to high degree of opt-out amongst senior governors, and many confessed to not attending PGA conferences and if possible 'sending a more junior governor'. As one experienced governor explained, 'the PGA, when it was first formed, it was run by senior people of some reputation who spoke with authority on professional matters... over time the PGA drifted much more to being more trade union and professional issues, and the calibre of people representing governors began to decline'.<sup>[#214]</sup> As one former top prison official put it, 'if governors were able to produce a professional association that was on a par with ACPO for example, that would be a good thing. As a founder member of the PGA, I don't think it has ever realised its potential'.<sup>[#215]</sup>

### **7.3 Autonomy of governors to influence capacity in their prisons**

For many governors, managerialism is associated with excessive constraint on their professional autonomy and discretion. The discussion in the previous section has helped to shed light on why this might be so. Linked to this is also a tendency amongst some governors to look back fondly on a bygone era of free-thinking and independent governors who had autonomy to run their prisons by their own design. It is peculiar that some look back upon this unchecked era throughout the 1960s and 1970s as something approaching ‘halcyon days’ for governing. For many others, however, there was no such thing. As one put it, ‘what may be seen as halcyon days of the governor would have been more related to the fact that there was no central superstructure. Some of the ‘legendary’ governors were quite dreadful in fact. There were questions about whether their behaviour would have been acceptable by today’s standards’.<sup>[#216]</sup> Another former top official said as much:

The days when idiosyncratic governors produced failing prisons were inexcusable. It isn’t something most people want to go back to. I’ve seen the quality of governing improve during that period because governors have been freer to manage. There’s been a lot more freedom for governors than I ever had. You see some really class governors and not much weak governing.<sup>[#217]</sup>

Managerialism, it seems, far from constraining governors, has also gone a long way to giving governors new kinds of autonomy. Indeed, NPM principles should in theory have allowed governors more scope to shape and develop their prisons. As one former senior governor reflected, ‘when I joined the Prison Service in the mid-70s, governors didn’t have a budget. You sort of just ran your prison. You did what you could with overtime, you tried to stop escapes, but accepted the fact that prisoners might escape. It was the sort of ethos based on the public school system’.<sup>[#218]</sup> Managerialism allowed governors to become managers of their own budgets, shape the corporate and operational practices of their organizations, create structure and culture in which their staff can improve and develop, and so on. Governors have confirmed a general level of autonomy.

There can be very few jobs in the public sector where you still have so much freedom effectively to determine the character of what you are managing. There are reams of performance standards and targets, and everything else, but in practice there’s a lot of scope to impose your personality and will on what is a multi-million pound organization.<sup>[#219a]</sup>

Practically all governors interviewed articulated plans or visions about how they would like to see their prison develop during their term. As one governor reflected, ‘you’ve got desires about how you want your own organization to grow, against the practicalities of maximizing available operational capacity. These are natural organization tensions, and I’m sure you’d get them in any commercial organization’.<sup>[#219b]</sup> A strong tendency amongst governors has been to shape the type of prison population held in their establishments. Governors generally acknowledged a tendency to want to use population shaping as much as possible to stabilize the culture of the establishment. Governors suggested that they would commonly seek to stabilize the culture and attract funding by developing specialist or ‘niche’ functions. As one put it, ‘I’m a Cat C prison which doesn’t do many things very well. Being a Foreign National Prisoner centre would be useful. Doing something with X and Y wing with my sex offenders would also be useful. I need a niche in the market’.<sup>[#220]</sup> One current local governor summed up this tendency over the years for ‘programme creep’ in the local estate.

There are very few public sector organizations where I could have the sort of creativity that I have here now. But governors have to accept that we are part of a new changing financial landscape. And it’s their own fault because they have just spent money willy-nilly on their own ‘pet projects’, which haven’t made any sense to anybody...ever. For example, I’ve got this unit for elderly lifers. Why have I got that? I’m a local prison serving the courts. Because some governor has said, ‘oh I’ll have that money, I’ll do that for you’. But it’s a pointless waste of resource

[#221]

New capacity put into existing prisons have come with new facilities which can be made available across the whole prison and, as many governors have argued, have considerably improved the overall quality of life and access for prisoners (and staff). As one governor explained, the caveat for providing new accommodation was that ‘a lot more should be done in terms of broader service provision for the prison. A new multi-activity centre was built, reception was extended, a new kitchen. It had to be a package, it couldn’t just be an accommodation unit on its own. That was successfully bid for and provided as part of the project’.<sup>[#222]</sup> Another senior official recollected going to a prison in South Yorkshire during a time of population crisis. ‘I said to the governor, we’ll give you that new house block, but we’ll also give the workshop you were promised years

ago, and another one for the new lot. He was delighted because it gave him more options for this regime'.<sup>[#223]</sup>

In the final few pages, I turn attention to governors' ability to maximize latent capacity within their prisons. We already have seen in the previous two chapters how ministers and senior officials have by necessity focused on operational aspects of the system perhaps to the detriment of more strategic leadership and planning. We see similar characteristics still in the role of governing governor. This incorporates quite complex interplay of governors' perceptions of their cultures and roles. In many governors, a 'chief executive leadership style of approach is visible, and these governors are less inclined to get directly involved in the operational minutiae of their establishments.<sup>105</sup> The point here is that they are able to preside over a management and staff structure which practices the principle of subsidiarity effectively, in other words, its governance structures are such that issues can be resolved at the right level without them being escalated to top governor.

For many governors, however, a major barrier to maximizing capacity in their prisons has been the inherent difficulties in being able to behave like chief executives. This has various aspects to it. For decades, prison cultures have exhibited paternalistic relations between staff and governors. These have tended to perpetuate excessive expectation that the top official in the organization is visible, accessible, and is the final arbiter on issues of contention. As one put it,

We have had a very paternalistic culture over the decades, particularly with officers living on site and so on. The governor has always been seen as lord of the manor, a powerful and important individual, and some governors, myself included, say 'my door is open, come whenever you want'.<sup>[#224]</sup>

Although conventions of 'regularly walking the landings' and 'having an open office door' are widely seen as important aspects of being a good governor, those less inured in the world of prison culture, particularly those had come from other professional backgrounds and had been exposed to other professional cultures, tended to view this kind of paternalism as something peculiar to the prison system. And, for that matter, not a particularly effective way to run a large modern organization, even if it is a prison. One female governor with experience of public sector leadership outside the world of the prison system summed this up eloquently.

My preferred style of management is more the leadership stuff. That I should not be involved in the day-to-day. That I should be strategically placed. Culturally it's very difficult, because there is still very much an expectation for me to be 'mother', almost. It only happened today. People come up with incredible minutiae. I do find it quite difficult. Staff do feel it is their right. It is like me saying to Phil Wheatley, 'Phil, can I have a minute?' For most people, it's like 'I haven't seen the governor in a month'. Well, so what. If I see Phil Wheatley once a year, I think, there's a result. In most organizations, you wouldn't expect to see the Chief Exec once or twice a month. <sup>[#225]</sup>

The development of the 'chief executive' governor role also partly depends on the extent to which the working structures and practices allow delegation of tasks and problem solving to take place. Paternalistic cultures have tended to push problems and the search for their solutions back upwards, perpetuating the involvement of senior managers in these apparent minutiae of prison business. Many governors spoke glowingly of their management teams. However, many recognized this syndrome of 'problems coming back up' as staff tend to look up the hierarchy for assurance, accountability, and triggers for action. The quotation below from an experienced local governor illustrates one of the more extreme characterizations of this generally recognizable syndrome.

Delegation really has to be shoved down their throats. It means holding them by the lapels, saying look at me, open your eyes, I'm talking. It's not that delegation comes back up, it's that you never delegated it in the first place. Often people have got to really senior levels with transactional attributes rather than leadership attributes. They have been on the same journey after all. You can get on quite satisfactorily providing you don't want to make cultural change. <sup>[#226]</sup>

Many governors also talked of the challenges they faced in attempting to improve staff cultures and working practices. Prison staff will tend to work in the same prison for many years, and the tendency for entrenched mind-sets and practices is considerable. Small yet intractable groups of dominant staff were often cited by governors as having what was commonly described as 'corrosive' and 'undermining' influence on the staff group as a whole. As one governor described it, 'they were taking advantage, so you never quite knew who was off sick, who was doing what, and managers were not controlling that'. <sup>[#227]</sup> For many governors, there were aspects of the staff culture in the mid-2000s in large urban local prisons that were reminiscent of bygone decades.

[Large London local prison] in 2006 was equivalent to the British car industry in the 1970s. If individual employees are allowed to get away with not working hard, and are allowed to operate under poor working practices and are not well managed, they will take advantage. When that is systematically withdrawn from them, it is genuinely quite difficult <sup>[#228]</sup>

Governors frequently talked about breaking down these dominant cliques as an important part of getting staff motivation on a positive upward cycle. They emphasized the importance of being seen to do this collectively as a whole staff group, commonly describing the process in terms of ‘a journey for us all’ and recognizing that in many cases, ‘you have to go backwards to go forwards, but once we started going forward, we leapt forward quite significantly’. <sup>[#229]</sup> This linked to another common observation by governors that dominant corrosive cultures tended to normalize a kind of de-motivated and unquestioning culture amongst potentially talented and engaged staff. Governors pointed out that once the corrosive influences are neutralized, culture and working practices can be transformed onto a positive footing, and latent capacity can be released. As one governor reflected, ‘what was interesting for me as a manager was the classic situation of people thinking they were happy but not realizing quite how unhappy they were. They thought that the position they were in was great, because they could get away with all sorts. The truth of that is that you slightly scratch the surface and what you found was high levels of stress and genuine absence. When you fix the corrosive stuff, people admit to being much happier’. <sup>[#230]</sup> Many governors talked about individual staff members admitting as much ‘during quiet moments’.

In these many observations from governors, we see a similar kind of syndrome to the one described in the Brixton reception vignette in the opening pages of this thesis. On the one hand, prisons appear to be working at close-to-tolerance capacity and having to find cost savings, yet at the same time, governors frequently acknowledge considerable obsolescence or dysfunction in the way capacity is currently deployed. In this sense, capacity stress can be seen as much a problem of dysfunction in the system as it is one of overload. In this sense, it seems characteristic of the prison system that it is able to conceal considerable amounts of latent capacity, which from time to time, can be activated and unleashed. As the next chapter discusses, this may explain partly why public sector prisons have been able to respond so apparently effectively to market testing and performance improvement measures.

As the next chapter will also show, for more ardent managerialist governors, particularly those who have been subject to private sector commercial cultures, crowding and capacity stress become issues which can be neutralized or fully mitigated through improvements in management and governance in the prison. One current public sector governor characterized this general view.

Better organization allows you to be able to cope with and manage better serious operational problems [...] If you have that as the basis of systems, you are more able to cope with the personal issues that come out of things like crowding. You can give people confidence. If we can make that systematic you can have as much overcrowding as you want actually, and cope with it even better.<sup>[#231]</sup>

Such optimism about the ability of better management to neutralize the detrimental effects of CCS may be all very well, but the picture provided by governors here in this section is more complex and nuanced. In a managerialist world, governors clearly have had autonomy to shape and influence their prisons, and many of those I have spoken to for this research have illustrated exactly this. The influence of a governor to change a prison cannot be underestimated, and in this sense, a lot of the myth-making around governors as fixers or consolidators or whatever must be taken at face value. As we have seen in this section, the autonomy of governors is also constrained by the cultural and practical constraints they face in managing in a total institutional environment.

## **7.4 Conclusions**

Constrained autonomy of governors incorporates quite complex sets of perceptions and dynamics. Governors hold strong professional ethos as civil servants and public sector managers to want to make the prison system work. They tend to see themselves realists (indeed, fatalists) in terms of what they can do to impact crowding and capacity stress, and take a pragmatic view that they are responsible for do the best for their prison and staff, and finding ways to balance the various expectations on them. They have commonly acknowledged that the system has improved over the years and that managerialism has been an important part of this improvement. Yet they have tended to see more intensive managerialist and command-and-control cultures over the years as constraining their own ability to shape and manage their prisons.

Governors have often criticized the excessive performance targets, budgetary and human resources restrictions, and the continually disruptive and distracting effects of having to manage the movement of prisoners around the system. They have also talked about the importance of knowing how to ‘play the game’ with their area managers and senior officials, and with other prisons. Within this, governors acknowledge that they have certain (if perhaps diminishing) autonomy vis-à-vis the centre to shape the way their prisons develop. The collective professional status of governors has however got weaker in recent decades, and although governors often have close collegial cultures at regional or functional levels, collectively as a group of public sector professionals they are relatively beleaguered compared to, for example, chief police officers or headteachers. The culture of career development of governors has also tended to reflect autocratic and informal styles of governance, and has worked against the development of a strong and visible professional governor cadre.

It is peculiar therefore that the role of governing governor in a prison shows signs of being at the other extreme – what we might describe as a ‘bossist’ culture which tends towards patriarchal and autocratic characteristics. Governors have talked about having considerable autonomy to set the tone and culture of their prisons. Yet at the same time they have mentioned important constraints which arise from these sorts of excessive focus on the governor. These constraints may be seen as barriers to maximizing latent capacity in the prison. There are two important aspects here. First, management and governance structures in prisons are often not robust enough for governors to delegate tasks effectively, and there is a tendency for operational minutiae issues to get passed back up to the governor’s office. Second, the emphasis on the importance of the governor can be valuable if there is consistency in the personnel involved. But, as we have seen, governors tend to be moved around frequently, and this leads to instability at the top. In ‘bossist’ cultures, instability at the top can accentuate resistance, fatalism, and inertia below.

It is tempting to view the role and predicament of governors as being too far removed from the high politics and decision making which is seen to determine crowding and capacity stress. Governors are however part of the system, and their constrained autonomy is defined by their position in this politically-sensitive and nationally managed system. It is also defined by their inclination and ethos as

professional managers to do the best for their prisons and staff given the constraints. The persistence of strong command-and-control cultures from the top imply ingrained fatalistic cultures from the bottom. For the system to remain stable, some kind of equilibrium is required, and this by definition implicates all actors in the system. Governors may for very good reasons seen themselves as powerless to affect characteristics of the system. But at the same time, they are by nature an important part in sustaining the equilibrium of the system. I return to this systemic view of individual actors in the final chapter. Before I do this, however, I focus attention on one final aspect of constrained autonomy - the market for privately managed prisons.

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<sup>96</sup> Former senior prison governor <sup>[#170]</sup>

<sup>97</sup> By ‘governors’, I refer mainly in this chapter to the highest grade of prison governors, known as ‘governing-governors’ or ‘Number 1 governors’. I have carried out 62 interviews with current or former governing governors. I have also conducted focus groups with deputy governors, and have also interviewed and met many other prison managers during my visits to 29 prisons.

<sup>98</sup> The role and perspectives of prison governors in the UK has been under-researched in recent decades. Key texts include Wilson and Bryans (1998) and Bryans (2007). Bryans (2000) writes, ‘governors are key actors in the penal environment and deserve more attention than they have received from academics and researchers’ (p15).

<sup>99</sup> I wish to thank management at Birmingham prison for agreeing to collate and provide this data. Data in Figure 7.2 incorporates weekdays only.

<sup>100</sup> I would like to thank staff from Prison Service Population Management for providing details data on prisoner overcrowding drafts for the period July 2008 to July 2009. This data is shown in more detail in chapter 3. During this period, Birmingham prison received 1,316 prisoners on overcrowding drafts from other local prisons. 959 of these came from London local prisons. Assuming 260 working weekdays in the year, this is equivalent to just over five prisoners per weekday processed into the prison. During the same period, Birmingham prison processed 2,073 prisons out of the prison on overcrowding drafts (equivalent to around 8 prisoners per weekday). Most of these were sent to local prisons in Liverpool or Manchester.

<sup>101</sup> The Prison Service and NOMS over the years have developed what they call a ‘closeness to home’ agenda, a programme and strategy to reduce the extent to which prisoners are moved away from their homes or key support networks.

<sup>102</sup> ‘Operation Safeguard’ is the name of a contingency measure introduced in October 2006 to sanction use of police and court cells to accommodate prisoners during periods of acute prison population pressure. It was a formally agreed measure between the Association of Chief Police Officers (ACPO) and the Home Office, and set out criteria for which types of prisoners should be held under such arrangements.

<sup>103</sup> HDC stands for Home Detention Curfew. It is a scheme for release on licence of certain short-term prisoners usually weeks or months before the completion of their sentence. There are restrictions on particular types of offenders, for example, sex offenders and violent criminals. Prisoners are assessed for eligibility and suitability for release, and release is sanctioned by the governor of the prison. Prisoners are fitted with an electronic tag to ensure that they adhere to the restrictions of curfew. HDC was introduced in 1999 under the Crime and Disorder Act 1998. The table below shows the number of HDC releases made, average number of prisoners on release at the end of the years, and the number of recalls for breach of conditions (to the nearest 10)

	Total number of HDC releases	Average number of offenders on release at end of year	Total number of recalls due to breach
1999	14,850	2,000	700
2000	15,510	1,700	770
2001	13,650	1,700	670
2002	20,460	3,100	1,480
2003	21,190	3,700	2,720
2004	19,290	3,400	3,000
2005	17,300	3,300	2,630
2006	13,670	2,500	2,180
2007	11,430	2,400	1,660
2008	11,720	2,600	1,440
2009			

<sup>104</sup> References to 'Prison Governors Association' and 'Prison Officers Association' were searched in the following national newspapers and where applicable their Sunday versions: The Business, Daily Mail, Daily Star, Daily Telegraph, The Express, The Guardian, The Independent, The Mirror, Morning Star, News of the World, The People, The Sun, and The Times. Full names and abbreviations were used in the search, rather than just abbreviated versions which are used as labels in the graph.

<sup>105</sup> Throughout the research, I developed a simple rule of thumb checklist which I applied whenever I entered a governing governor's office. *Question 1.* Can you see a whiteboard? Yes / No. *Question 2.* If yes, can you see the prison unlock figures scribbled on it in one of the corners? If 'Yes' to both of these questions, then it was often the case that this governor would show characteristics more aligned with the traditional operationally-focused governor rather than one more aligned with 'chief executive' leadership styles. Clearly this is not at all scientific, and throughout the research I encountered some 'mixed cases'. Generally speaking though, governors were closer to one or other mode.

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## *Chapter 8*

### **Privately contracted prisons – new setting, same condition**

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*People in the public sector want to do good things, but the system does not allow them to do it. Whereas people in the private sector want to do good things, and the system supports them and enables them to do it. Everything about the public sector is just lack of trust all the time. If we didn't browbeat you all the time, if I didn't keep telling you all the time, you'd be out doing this and that. You mustn't do this and you mustn't do that. It's a very different way of looking at things in the private sector.*<sup>106</sup>

The growth of a market for privately managed prisons and prison services is an important part of the story of chronic capacity stress (CCS). Accounting for around 11 per cent of total capacity in 2009, private sector firms have established themselves as designers, builders, operators, and financiers of new prisons, as well as running other key services such as prisoner escorts. The private sector has done much to impact capacity. It has been a near-exclusive provider of new prisons since the early 1990s. It has also been seen as leverage for improving the existing public sector system, as a source of innovation and catalyst for getting more from existing capacity latent in the system.

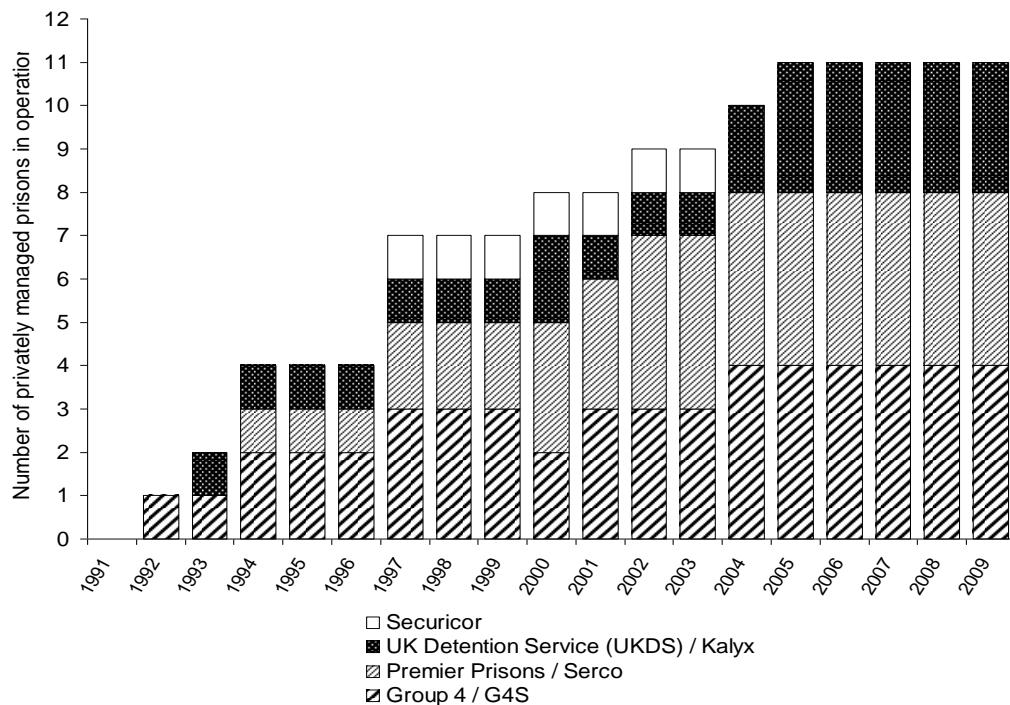
The concept of constrained autonomy applies equally to the private sector. Private firms have a particular type of autonomy. They operate in a different environment, under different rules and cultures, and are able to do things differently, freed from many of the constraints that impact the public prison system. But they have also been part of the national prison system, and have been constrained by it. In this chapter, I examine constrained autonomy for private sector actors.<sup>107</sup> In the first section,

I review briefly the growth and maturation of the private market, and highlight five key reasons why private sector firms are constrained as part of a national prison system. In the second section, I examine specifically the central role of the commercial contract in defining and managing the relationship between private operators and the commissioning Authority.<sup>108</sup> In the third section, I examine some of key autonomies of the private sector, particularly how the contract creates room for autonomy in managing capacity issues, and difficulties of replicating this in a public sector context.

## **8.1 Constraints on the autonomy of the private sector**

Public-private partnerships have been an important part of managerialist change across UK government since the mid-1980s. The prison sector has been no exception. From the early 1990s onwards, it has grown what can now be described as a matured and well-established minority market share of privately-managed prisons. Early academic literature on private prisons<sup>109</sup> in the UK reflected intense scepticism (as well as ideological distaste) on the idea of extracting private profit from incarceration (Ryan and Ward, 1989; Matthews, 1989; Stern, 1993).<sup>110</sup> In more recent years, accounts have become more circumspect, seeing the issues less in ideological terms, and more in terms of economic and value for money questions (James et al., 1997; Harding, 2001; Sachdev, 2008; Shefer and Liebling, 2008). Despite an ever-stabilizing private sector market, critics have continued to cast doubt on the moral and economic value of private prisons (Nathan, 2003). Indeed, the efforts of these committed individuals have been valuable in collating and publishing data on private prison markets.<sup>111</sup> This has counteracted the frustrating constraints of commercial confidentiality on the ability of the public to assess value for money of these public-private partnerships.

**Figure 8.1: Growth in market share for privately contracted prisons**



Source: Prison Service and NOMS annual reports.

**Table 8.1: Privately contracted prisons, since 1992**

Year	Name ( <i>City or county</i> )	Opened by (now)	Type	CNA at open ( <i>Op Cap 2008</i> )
1992	The Wolds ( <i>E Yorks</i> )	Group 4 (now G4S)	Remand	320 (380)
1993	Blakenhurst ( <i>Worcs</i> )	UKDS ( <b>back to PS in 2001</b> )	Local	650 (1070)
1994	Buckley Hall ( <i>Lancs</i> ) Doncaster ( <i>S Yorks</i> )	Group 4 ( <b>back to PS in 2000</b> ) Premier (now Serco)	Cat C Local	350 (380) 770 (1150)
1997	Altcourse ( <i>Liverpool</i> ) Lowdham Grange ( <i>Notts</i> ) Parc ( <i>S Wales</i> )	Group 4 (now G4S) Premier (now Serco) Securicor (now G4S)	Local Cat B Local	600 (1290) 500 (680) 820 (1190)
2000	Ashfield ( <i>Bristol</i> ) Forest Bank ( <i>Salford</i> )	Premier (now Serco) UKDS (now Kalyx)	YOI Local	410 (400) 800 (1150)
2001	Rye Hill ( <i>Warks</i> )	G4S	Cat B	600 (650)
2002	Dovegate ( <i>Staffs</i> )	Premier (now Serco)	Cat B	800 (860)
2004	Bronzefield ( <i>Middx</i> )	UKDS (now Kalyx)	Local (f)	450 (470)
2005	Peterborough ( <i>Camb</i> )	UKDS (now Kalyx)	Local	820 (1010)

Notes: *Year* refers to year opened. *Type* refers to the predominant function of the prison at opening. CNA is reported as the full amount although it may have taken more than one year for the prison to reach its full CNA capacity. *Op Cap* is the annual 2008 average rounded to nearest ten. The consortium UK Detention Services is abbreviated to UKDS. HM Prison Service is abbreviated to PS.

The percentage growth in private sector market share over the years has been broadly equivalent to the number of private prisons (see **Figure 8.1 and Table 8.1**). In 2009, eleven private prisons accounted for around 11 per cent of the prison population and capacity. Three private firms, Serco, G4S, and Kalyx have become established incumbent operators in the system, with the GEO Group relatively newly established in the UK as a fourth competing operator. Since the mid-1990s, government increased its total expenditure on private prison capacity from around £40 million to more than £300 million, a seven and a half fold increase expressed in terms of 2009 prices, and broadly equivalent to 9 per cent of total net operating costs of the prison system less capital expenditure.

Private prisons are fully integrated into the national prison system. They do not form their own separate system for particular types of prisoners. Any prisoner entering the system could in theory end up in a private prison subject to location and functional requirements of the prisoner. As part of this national system, therefore, private prisons do not have pure autonomy to follow their own interests or strategies. Indeed, as we have seen with other key actors, they are inherently constrained. I outline now five important areas of constraint, which cast doubt upon arguments that the private sector can behave as an unchecked autonomous actor, able to extract excessive rents from the system over the years.

The first constraint relates to the basic *commercial and reputational* pressures on the contractors to deliver what government requires. Critics of the private sector have focused particularly on the risk that private prisons will seek rents and profits, squeeze costs, and cut corners in order to maximize financial returns.<sup>112</sup> Concerns around adequacy of staffing levels in new private prisons over the years, as well as high profile failure of regimes and order, have tended to add support to such critical accounts.<sup>113</sup> Private sector officials, however, have acknowledged that although problems of inadequate staffing and control have been exposed over the years, the sector has learnt from this and adapted by adjusting staffing levels upwards. As one official put it:

After Dovegate and Rye Hill, Bronzefield and Peterborough were much more realistically priced. I don't think anybody again would go at the level of pricing that was present at Dovegate and Rye Hill. You also get worried about company reputation. <sup>[#233]</sup>

Indeed, in a commercial environment, reputational factors are seen as important constraints on excessive rent-seeking. Directors<sup>114</sup> emphasized the commercial importance of running good quality prisons, and furthermore, the fact that running good quality prisons over the long term was in itself commercially more advantageous than attempting to do things to maximize short term profits. Contracts for private prisons, after all, tend to be long term over 25 or 30 years, and therefore cannot be subject to short-term rent-seeking strategies. In fact, these officials argued that such strategies made little or no commercial sense.

This is one of the common arguments you hear about the private sector. Everybody sees the private sector as being short-termist, cutting corners to make a profit, and wanting the prison population to go up and up. When actually the opposite is true. You can't do short termism because the minimum contract is 25 years. So you've got to win the contract when it comes up for renewal. You can't cut corners because, for a start, you are under about three times the level of scrutiny compared to public sector governors. And what they don't realise is that if you cut corners, you are not going to be operationally successful. And if you are not operationally successful, you are not going to be commercially successful. You get penalized to hell on the contract so all your profit will go on fines. Your reputation will be crap and you'll never get another contract. So to be commercially successful as a company, you've actually got to be one of the best performing prisons. <sup>[#234]</sup>

The second important constraint on the private sector is a *professional-ethical* one, in the sense that a great many of their senior personnel have transferred across from the public sector prison service.<sup>115</sup> These officials have tended to be governors who have been recruited directly. Many, although not all, talked about reaching a point at which they felt frustrated or disillusioned about the public sector. Many directors pointed out that for those who argue that public sector is good and private sector is bad, it was important to keep in mind that private sector prisons have largely been managed by governors-now-directors who had found severe shortcomings in the public sector (not the private). One senior official expressed this commonly held view.

There is a perception that in the public sector there are only good moral altruistic people, and in the private sector, we are all capitalists. It couldn't be further from the truth. I've seen many more things that I find morally difficult in the public sector. <sup>[#235]</sup>

The third area of constraint is *logistical* in that private prisons must operate as part of the national prison system. One common criticism heard over the years has been that private prisons have been able to cream-skim the type of prisoners they receive. Ryan and Ward (1989) write that 'privatization would lead to the construction of a two-tier system of punishment, with private institutions creaming off less serious and more tractable offenders' (p72). In the context of this system however, the England and Wales system, it is difficult to see how such cream skimming can take place. All local prisons, including private prisons, must take prisoners from the courts in their catchment areas, and must operate in the wider national system. Both mean that they have little or no influence over which prisoners come to them.<sup>116</sup> As one official explained:

There is no system I know in which the private contractor has any control over the input which comes to them. They are either sent to them by the state or they have a catchment area. Under the most elaborate of conspiracies it is difficult to see how they control the numbers they get. They may be happy to see the numbers rise or fall, but you can't argue that they control it.<sup>[#236]</sup>

In fact, private prisons may end up receiving more difficult prisoners, simply because public sector prison staff may view the private sector prison as an opportune 'dumping ground' for their difficult prisoners. It is interesting, for example, that private training prisons have ended up in recent years with high numbers of indeterminate sentence prisoners (known as IPP), effectively trapped in custody as a result of insufficient access to the programmes upon which their release is dependent.<sup>117</sup>

A fourth constraint results from public sector *standardization and proceduralization* of private sector operations. Public sector officials have pointed out the importance of maintaining parity and consistency across the system as a whole. Private prisons are subject to the guidelines and regulations published by the Prison Service to control and regulate activities in prison establishments. Directors frequently complained about the administrative burden of complying with Prison Service Orders and Instructions, and often admitted to just ignoring many or phoning headquarters and saying that they would do not do whatever was being asked of them. This tendency to resist requirements which are not specified in the contract is however usually balanced with reputational considerations about being seen to be a cooperative partner. Indeed, most directors acknowledged that they would do their best to accommodate requests where possible.

Private sector officials identify similar kinds of constraints from the tendency of the public sector to determine and specify inputs rather than think more expansively about outcomes (leaving decisions about inputs to the contractor). Private sector managers have been critical, for example, of the lack of ability and inclination within the contract liaison units in headquarters to think strategically about new prison design and new ways of doing things. One private sector bid leader perceived weaknesses as follows:

The difficulty is with the customer's understanding of the process. NOMS just don't have a clue what they are doing. The teams keep changing, there's nobody with the knowledge. Some of the bid assessors were reasonably junior governors. So if we are trying to pitch high level strategic change, and look at doing things differently, we need guys who can work on a strategic level and conceptualise the solution. But these guys are worried about if you move a prisoner there, how are you going to do that and so on. That's fine, but at the end of the day, it's for us to decide things like how many showers we are going to need. <sup>[#237]</sup>

In recent years, as financial pressures have tightened, senior managers have sought to pare down prison services to a 'lowest common denominator' standard, which constitutes a standardized level of acceptable service quality across the system – a process euphemistically known as 'disinvestment'. For directors, disinvestment has often meant that they have had to scale back their own service provision in order to align themselves with national levels of performance. One director explained the difficulties of integrating the NOMS requirement to shut down workshops and other commercial activities on Friday afternoons.

The Prison Service closes down on a Friday afternoon. NOMS say they don't want a two-tier prison service. So they force me to replicate their close date. Again, contractually I don't have to do that. But as a good customer I look into doing that. But I can't close down on a Friday afternoon because I have to shut my workshops. Now the contract for the workshops here states that they must be commercially viable and generate revenues enough to pay for all education and teachers inside the contract. That's why I'm millions of pounds cheaper than equivalent public sector jails. They don't pay for any education or city in guilds. So, at any one time, all the men in this contract on education and all those spaces, is paid for by those workshops. So I say to NOMS, I can't close that down, unless you offset the lost revenue. <sup>[#238]</sup>

The final type of constraint relates more widely to the *growth of private sector market share* over the years. There have been signs over the years that private sector firms had

envisioned a quicker growth in market share. James et al. (1997) report the announcement by the Home Secretary in 1994 that management of a further nine prisons would be offered to the private sector, bringing the total by 1997 to about 10 per cent of the prison estate (p157). Private sector officials also suggested at a Home Affairs Select Committee in 1996 that they envisaged an optimal private sector market share at somewhere near to 25 per cent (p169). As Figure 8.1 shows, neither of these aspirations has materialized. The market share has grown steadily, but not as expansively as many had envisaged.

This under-expansion might be explained by various factors. It is generally acknowledged for a start that in order for the market share to grow, it would have been necessary for the government to transfer existing public sector prisons into private management. Throughout the period covered by this research, however, not one public prison was handed over to the private sector.<sup>118</sup> Private sector officials point out that this has been much to do with the attractiveness of the package offered by government to the market. In 2001, for example, Brixton prison was formally submitted to a market test due to unacceptably low standards of performance and corrosive culture amongst staff. Not one private sector firm, however, submitted a credible bid to run Brixton. As one former senior NOMS official put it:

Why would the private sector want to run failing prisons? They want to run good prisons, not really bad ones. It's all very well for the Prison Service to threaten these prisons with transfer, but they don't seem to realise that the private sector doesn't want them in the state they are in and the conditions they come with.<sup>[#239]</sup>

Views amongst top officials from that period were that had the private sector shown interest in taking on Brixton, then it probably would have been handed over in 2001. One former top prison official reflected that 'I don't think we've come close since Brixton to seriously giving the private sector an opportunity to show what they could do'.<sup>[#240]</sup> Another former experienced official made a similar point.

They are having another go with Birmingham and Wellingborough. Whether they'll actually go through with it, who knows? But this is all about realpolitik. It's got nothing to do with management or whatever. It is about power struggles, I think. Until they grasp the nettle, contract out an existing big prison, I don't think they'll ever reach that 25 per cent market share. All they'll be able to give the private sector is the new builds.<sup>[#241]</sup>

Lighter alternatives to market testing have been the processes of ‘performance benchmarking’ and ‘performance improvement plans’ (PIP), used by NOMS in early 2000s as a kind of ‘last chance saloon’ for failing prisons. Between 2001 and 2004, a period of much more intensive comparative benchmarking activity by NOMS, eight prisons underwent performance benchmarking, including Wandsworth, Liverpool, and Dartmoor, on the understanding that if these prisons failed to show that they were capable of improving their performance, they would be put up for market testing. The result of this exercise was that precisely *none* of these prisons were earmarked for market testing, with senior officials in NOMS stating that all of these prisons had risen to the challenge of implementing PIPs. For many public sector officials, the whole point of this process lay in the potency of threat and the ability of individual prisons to get their act together. In the Brixton case, one official reflected that ‘it worked ‘precisely because the Brixton staff were worried about being contracted out and they engaged with the process’.<sup>[#242]</sup>

The dynamics involved in evaluating public sector prisons are double-edged. Top officials have suggested that they had been willing give prisons away to the private sector, but that these prisons had shown an ability to put together a ‘competitive’ proposal for performance improvement. As we have seen from earlier chapters, reluctance of ministers, particularly Labour ministers, to take on the POA has constrained the growth of the private sector. Senior prison officials and Treasury officials also described the practical difficulties of being in a position to judge one way or the other whether a prison’s performance improvement plan is any good or not. Treasury officials interviewed admitted to not being able to help feeling uncomfortable about the extent to which they themselves could (or should) be expected to judge prison performance on the strength of what they saw. One senior Treasury official characterized this scepticism.

This benchmarking, we didn’t really believe in it. We weren’t really sure in our judgements. It wasn’t really our job to assess the quality of prisons. We felt slightly off our ground. In fact, we felt slightly stitched up by being on the panel in the first place. We felt that the people who should be doing this were the people who run private sector jails, the people who can do a proper analysis of this. Not us.<sup>[#243]</sup>

The same officials also remarked on the general pressures they felt to give benefit of the doubt to the prison management and staff under review. The fact that these judgements were being made by senior prison officials indeed raises questions about motivations for allowing public sector prisons to fail performance tests. For senior officials in the public sector system, the private sector has represented a competitor, and it should perhaps not be surprising that these officials would favour an outcome towards public sector bids. One former top official, however, explained why it should not be so surprising that public prisons have consistently managed to evade being transferred.

The public sector should always have an advantage if terms and conditions for staff are the same. There's no need to break off 10 per cent to give to shareholders. If it's sharply managed, the public sector would normally win if the terms and conditions of staff remain constant. Once the staff stop prattling about and the managers are decent, it's difficult for the private sector to win. Because they have got to make a profit as well. <sup>[#244]</sup>

Another constraint for the private sector in taking over existing public sector prisons has been the cost of replicating public sector pensions for staff transferred. One official summed up the problem as one of a difficulty in establishing a level playing field between public and private because of the duty to cover the cost of public sector pensions.

I know that we can't provide a public sector pension for much less than 30 per cent. At the minute the MOJ pay 19 per cent. That's a big issue for us. If we've got a 10 per cent difference on staff costs, which is 70 per cent of the price of the prison, we are 7 per cent more expensive from the outset. The pensions bit is probably the final stumbling block because nobody wants to admit that public sector pensions cost 30 per cent. <sup>[#245]</sup>

These five areas of constraint show how the complexities of the wider system impinge upon autonomy of the private sector and cast doubt over arguments that firms have been able to engage in excessive rent seeking and to behave in self-interested and usurious ways. As the market has developed, the commercial and competitive pressures on these firms have increased, as have the bureaucratic and logistical constraints on the way they operate. With these constraints in mind, the next section moves on to look at the role of the contract in shaping the way in which private sector firms and directors manage CCS.

## 8.2 The ‘contractualization’ of crowding and capacity stress

The contract is the crucial mechanism determining the way in which private sector operators manage crowding and capacity stress. It specifies the broad range of services which the contractor will provide, including required standards of output for those services, and the schedules of payments received and penalties due. It specifies an agreed number of managed prisoner spaces that should be made available. Operators are penalized for dropping below that number, and the Authority is incentivised to ensure that all available spaces in private prisons which are being paid for are being utilized. Contracts also typically specify type and volume of programmes and treatments that will be provided, as well as key outputs such as ‘hours of purposeful activity’ and ‘time out of cell’ for prisoners. Performance against contracts is closely monitored by public sector officials on-site in the prison and in NOMS headquarters.

For private sector directors, the contract is at the heart of what they do and what they prioritize. As one current director put it, ‘I do more than govern prisons. I run a contract. I manage stakeholders. Numerous interested parties’.<sup>[#246]</sup> The emphasis is squarely on the need to manage and operate their prisons in such a way that they deliver against the terms of the contract. One top private sector manager reflected on the objectivity and predictability it brings.

The contract means that you begin to get away from ‘personalities’. You’ve got a legally binding contract between an organization that wants a service and an organization that wants to make money and survive by delivering that service. I think that is the real secret to it. The contract makes things relatively simple.<sup>[#247]</sup>

There is a simplicity to what directors are expected to achieve. They are charged with fulfilling all the service requirements set out in the contract, as well as complying, broadly speaking, with prison system rules and regulations. In terms of their relationship with their own bosses, they are charged with delivering the contract within the pre-specified cost parameters. As one official put it, ‘here’s a financial package with the banks that says that we will get an 8 per cent return. We don’t want 7.8 per cent and we also don’t want 8.5 per cent. We want 8 per cent. So if you go off line and you incur penalties, that comes out of the profit margin, and the bosses say ‘we want our money’.<sup>[#248]</sup> Although the concept may appear simple, the realities of delivering this for

many directors have been demanding, particularly as in the early days of the market contract terms agreed were often excessively tight. As one former director explained:

Some of them were horrible. The problem is that the price can be absolutely too low. At that price, bad stuff happens and it gets frightening. The job of the director is to keep the cost line at a point below. That gap is profit. That's really important. But you are under such pressure. Because the price is too low. You've got staff turnover at 40 per cent. That's improved now. So if you let costs go, and say sure, we'll take more, we'll do more for you, and it's not in the contract, we'll try and help you, cost increases. And we all go home.<sup>[#249]</sup>

Contracts provide structural integrity and limit the extent to which capacity can flex and stretch. As one private prison director pointed out, the contract is a 'real legal document. It's got teeth and penalties. And it is both a sword and a shield'.<sup>[#250]</sup> It provides a basis for both parties to hold the other to account if one has reneged or failed to deliver against pre-specified terms and conditions. It also provides both parties with a protective device, some kind of effective 'bottom line' with which to counter unreasonable requests. As one NOMS official put it:

Private prisons are far less flexible around numbers. They have contracts, and there are no contracts in public prisons. If the area manager says I'm increasing the Op Cap...if the contract stated that they should hold 1,000 prisoners, they could be required to take more, but they would have to be paid more money.<sup>[#251]</sup>

Directors referred to the more subtle and indirect protection which the contract brings in resisting excessive demands for stretching capacity. They emphasized the importance of not being seen to be directly refusing or blocking requests from the Authority. However, more indirect methods of prevaricating could be employed in order to stall or deflect requests. One current director outlined an example which reflected many other similar techniques of using the contract to resist capacity stressing.

They approached me last week and asked how quickly can you bring in another 60 in the new accommodation. I said I don't want to. They said please please please. I said that the contract says I don't have to for another five months because there is a six month stabilisation period. Now part of being a good customer is to be receptive to customer need, but by being receptive to customer, I run the risk of destabilizing the prison and getting a whole range of fines and reputation damage. And it is written into the contract that there is a six month stabilisation period.<sup>[#252]</sup>

Over the years, contracts have become more sophisticated in the way they have specified crowding. Early contracts tended to specify a number of prisoners which the prison would be expected to accommodate, and any additional numbers over this maximum would involve expensive contract renegotiation. In more recent contracts, thresholds or ‘escalators’ of acceptable crowding have been built in from the outset, meaning that extra increments (typically a maximum of 30 per cent in 10 per cent stages) can be activated from the existing contract at prices which are pre-specified and part of the original bid evaluation.<sup>119</sup> As one former official explained:

They've have learnt to allow for change up front...contracts which build in more flexibility. At the time of the original tender, it is a highly competitive business. You have to think about what your competitors are going to do. If you are asked for CNA plus 20 or 40 per cent. You've got to be quite tight on that otherwise you may do yourself out of a job.<sup>[#253]</sup>

The challenge for private operators has been to find a balance in the contract, allowing enough flexibility to accommodate crowding without undermining performance against the contract, while at the same time, presenting as competitive a bid as possible. Private sector managers and prison architects have described the detailed analysis and modelling which is done to find optimal cost-effective physical design specifications, which maximizes flexibility of usage, and balances design quality, decency, and cost. One bid director reflected on how private firms build flexibility into their bids. This example relates to cell design.

There are NOMS standards for cell sizes – single, larger, double. We had to make a call based on what we thought was the best configuration. If you only have single cells, you have to do a lot more building because there are a lot more walls. But if you have double cells, there are fewer cells which reduces your flexibility should some cells go out. It was more about costs and flexibility rather than being able to put two prisoners in every cell. The cells are ‘larger’ cells. They are not double cells. But they could take two people.<sup>[#254]</sup>

Private sector officials also explained the importance of maximizing the usage of communal space and facilities. There is an incentive built in at the design and construction phase for physical space and facilities to be multi-purpose, so that capacity can be optimized in the operation of the prison. For these managers, this flexibility in

use of facilities of the prison was seen as an important factor in allowing the capacity of the prison to absorb increments of crowding.

It's easy for us because we are the ones delivering all the services. We say we need this much space for the programmes, this and that, you don't need to provide them all with separate spaces. What we do is provide them with nice rooms that can be used for a number of things. We will then have a booking system to make sure that the rooms are being used intensively, and we run it like a Regus business centre...well, actually the prisoners run it. <sup>[#255]</sup>

The development of the market has involved adaptation and learning in terms of building in flexibility to accommodate increases in crowding. Officials acknowledged that many of the earlier contracts, particularly those signed between 1997 and 2002, failed to build in sufficient capacity in order to deal with surges in the prison population. As one director explained:

The effect has been huge. As a company, we made a mistake. We knew that the contract required to overcrowd to 30 per cent max, but we didn't build the purposeful activity centre big enough, and we won't make that mistake again. We built *[our next prison]* with a purposeful activity centre large enough to manage. That problem has caused me huge operational, management, and reputational difficulties in terms of achieving our purposeful activity targets. <sup>[#256]</sup>

Private sector officials also reflected on the importance of modelling the staff cost implications of crowding. If the increment is small enough, private sector prisons may be able to absorb additional prisoners into the existing regime without increasing staffing levels. However, at some point, staffing levels will have to be increased to accommodate increased number of prisoners and to ensure that the prison can fulfil basic contractual obligations and sustain safe environments.

Some steps for us would be more attractive than others. I think it was 25. Say, taking the first 25 would be very attractive because we could absorb all the marginal costs, and probably not even staff up. That would be pure margin. Then you go to 50, and you have to start recruiting staff, then that wasn't so attractive because your margin drops, and so on. We did a lot of modelling on that. We got to propose the steps. There's a lot of thinking that goes on behind that. <sup>[#257]</sup>

The risk for the private sector is that during times of population pressure, government may be likely to commission extra capacity, and then when pressure recedes, decommission them and leave the prison with costs of extra staff. As officials have

explained, this accentuates the need to maintain flexibility in all aspects of physical and human resources. It also creates incentives for private prisons to move quickly and in large steps towards the maximum level of crowding, and maintain high levels of capacity as normal.

**Table 8.2 Percentage crowding in private prisons, 1992 to 2009**

	Average percentage crowding above normal accommodation ( <i>Two year averages from year listed</i> )								
	1992- 93	1994- 95	1996- 97	1998- 99	2000- 01	2002- 03	2004- 05	2006- 07	2008- 09
<i>Male adult locals</i>									
The Wolds	-21	0	9	11	10	9	3	11	19
Blakenhurst	-43	-2	17	29	27				
Doncaster		1	29	39	38	46	42	39	47
Altcourse			6	21	33	60	57	57	63
Parc			-13	-4	5	20	21	26	40
Forest Bank					4	26	28	28	41
Peterborough							-7	6	15
<i>Closed training</i>									
Buckley Hall	-9	2	9	4					
Lowdham Grange		0	-2	-1	3	2	6	6	
Rye Hill				-2	9	4	2	6	
Dovegate					-6	0	4	6	
<i>Young offender</i>									
Ashfield				-12	-27	-8	-5	-13	
<i>Female adult</i>									
Bronzefield						-11	-4	-3	

**Source:** My analysis of data from Prison Service and NOMS annual reports. Positive figures denote percentage crowding above CNA and negative figures denote free capacity below CNA.

**Table 8.2** shows how private prisons have been crowded above their original contract capacity. The first observation is that the profile of crowding mirrors closely the profile of crowding across the system as a whole. Local prisons are heavily crowded, closed trainings are crowded but to a much lesser extent, and youth and female prisons tend to be shielded from crowding completely. Broadly speaking, private local prisons during the last decade have been marginally more crowded than large public sector locals. It is interesting that four out of six locals are also crowded well above the 30 per cent threshold. Private sector prisons have also tended to become crowded soon after opening.

These observations therefore cast some doubt over the extent to which the contract gives directors a basis on which to resist ‘excessive’ crowding. Clearly, the contract

provides for financial payments for increments in crowding. However, in the case of four of these six local prisons, crowding levels are at 40 per cent or above, a not insignificant test on existing flexibility already built into the prisons. Officials have argued that these excessive increments have come with new purposeful activity facilities. It is also interesting that directors have talked about the pressure to find ways of accommodating requests to take more prisoners from the Authority. One senior executive reflected on a similar kind of *de facto* pressure to accommodate which we have seen in the previous chapter on public sector governors. The reasons may be different in the private commercial context, but the general dynamic of rationalizing stretch seems familiar.

Sometimes we feel that if we don't look more than willing, and look to overcrowd and be accommodating, then we won't win new business. So you might say that it is fixed in the private sector, it is, that's our number, and they can't go over that. But in discussion, we always say yes because we don't want to be seen as being unhelpful. <sup>[#258]</sup>

This echoes too the discussion in chapter 4 about the relationship between CNA and Op Cap. Contractualization of crowding has created a sense of legitimacy, and perpetuated the idea that it is possible to establish and maintain meaningful normative thresholds between what is acceptable and what is not acceptable. Discussions with directors have reflected exactly that same kinds of rationalization and legitimization that have been prevalent amongst many public sector governors. One current governor reflected on how this relationship of control through counterbalance has been replicated in the context of private sector contracts.

CNA represents a bygone era. But we do treasure it. I have to have a cell certificate which is signed off by the area manager. It's preserved in private prisons where there's a definition of what a prisoner place is. You've got to have light that works, a desk, and so on. There are about 17 things which have to be added up. That's really important. If you've 800 cells, that is times 7 per week, times 365, and that is the amount of money you are going to get for the contract. So that gets repeated in the private sector contract. <sup>[#259]</sup>

In the private sector, the belief that crowding and capacity stress are issues which can be effectively mitigated and 'managed away' appears just as strong if not stronger. For many directors, as with many of the more 'chief executive' style governors in the public

sector, the question of crowding appears as a ‘false problem’, partly an ‘alibi’ or excuse for sub-optimal performance and partly something which may be seen as an issue of secondary concern which should not in reality hinder high performance in a well-managed prison. These views reflect a purest form of the argument that crowding and capacity stress are ‘constructed’ figments of the system itself. One private prison director captured this prevalent view.

It’s a myth. I don’t want to think about it. I don’t want to create the pressure in mind that it is a difficult job. They will say, but your prison is only built for such and such...and you’ve got more than twice that number. But we don’t focus on overcrowding. Or whatever. I don’t want to get bogged down in it. The day I use it as an excuse, I’ll use it until the day I die. <sup>[#260]</sup>

We have seen therefore a similar paradox to that discussed in chapter 4. As discussed, public sector governors argue that they rarely exceed operational capacity in their prisons, but acknowledge the fact that operational capacity of the system has stretched over the years as population pressures have increased. In the same way, private sector directors emphasize the protective value of the contract, yet must also acknowledge at the same time that crowding has stretched quickly and, in most cases, way above the 30 per cent threshold. As I aim to show in the final section of this chapter, the output and outcome focus of the contract does however offer directors considerable scope for doing things to mitigate crowding and manage it away.

### **8.3 Operational autonomy and comparisons with the public sector**

In this contract model, important constraints act on directors from two different directions. First, they must deliver outputs and outcomes pre-specified in the contract. Second, they must be able do this within the confines of budgetary financial model agreed with their own bosses and financiers. Both constraints can be tight and can put considerable pressure on directors. Together these factors create hard-edged commercial reality for private directors. Within the confines of these constraints, however, directors have considerable autonomy and freedom to determine how they are going to deliver these outcomes. They may shape the operations and cultures of their prison, optimize staffing levels, engineer the activities of staff in ways which encourage cost-effective outcomes, and generally try new things in order to get more out of existing capacity.

These hard-edged commercial realities appear difficult to recreate in a public sector setting. One of these officials contrasted the pressures and incentives for private sector directors with those of public sector governors.

If I overspend in the public sector, my area manager sits there and moans, but I'm not going to lose my job, and it is not going to affect my bonus. If you are on a ten grand bonus in the private sector. It's fab. But you have to work hard to get it. The maximum bonus I can earn is £800 before tax. I do not get out of bed thinking I must work harder. It just does not motivate me. <sup>[#261]</sup>

Service Level Agreements (SLA) have been tried in the public sector to replicate this contract-style discipline. There was however widespread scepticism about the effectiveness of these mechanisms. Another local prison governor reflected on the difficulties of replicating this commercial discipline through SLAs in public sector settings.

This SLA requires me to do some stuff. I had my first SLA meeting. Who comes? Me. My performance person. My finance person. The DOM? No. Too busy. The RCM? No, too busy.<sup>120</sup> He sent someone on his behalf, who sat there and told me I'm missing my targets on drugs, electricity, and so on. He sent me eight 'improvement notices'. In a proper contract, that would be the end of the world. There's no budget for that and it's straight off the bottom line. Leave a gate open here [*a public local prison*] and it gets reported as an 'incident'. Leave a gate open in [*a private sector prison*], and it's a thousand pounds. That soon changes behaviour.<sup>[#262]</sup>

The difficulty of transposing contractual-style accountability lies also in the conflict with command-and-control hierarchical structures of discipline throughout the public sector system. This governor quoted above reflected also on the institutional and cultural limitations involved.

How can you come to the table as independent parties, mediated by a document which we call an SLA, when the person across the table from you is your boss? It's not real accountability. You can't negotiate with someone who has a direct influence over your career. You ask 'is the SLA the most important piece of paper around?' Answer...no it is not. The most importance piece of paper is your appraisal form.<sup>[#263]</sup>

Comparative autonomy of operation has meant that the private sector has been able to run prisons more cheaply over the years. Comparative estimates have varied because it is not an exact science. Critics have argued that the cost differential between public and

private has gradually decreased as public sector have taken costs out of the system, and as private sector has been burnt from excessive under-supply of resources and absorbed the costs of operating in a wider bureaucratic system (Harding, 2001). Generally speaking, research and interviews tend to converge on a bare-bones cost differential throughout the 2000s at somewhere between 10 and 15 per cent (Harding, 2001, p285).<sup>121</sup> This ballpark estimate corresponds relatively closely to reported pre-tax operating profits for the private sector shareholders - in the broad range of 10 to 17 per cent annually.

A major part of these marginal cost savings comes from lower staffing levels in private prisons, and the ability of directors to deploy staff more cost-effectively. It is difficult to say in any absolute sense what the correct ratio of staff to prisoners should be in a prison, and it is possible to construct arguments each way for higher or lower ratios. As one senior public sector official put it, 'you would probably never know what proportion of the staffing in a prison is preventative and what proportion is wasteful'.<sup>[#264]</sup> Nevertheless, private sector prisons have managed to normalize considerably lower staffing ratios than public sector prisons. Directors commonly talked about the comparative freedom to manage staff time creatively, as well as explore imaginative and more cost-effective approaches.

In the public sector world that I was in, a unit of 80 prisoners would probably have a manager and half a dozen staff on a daily basis. We run it with three staff. They are expected to deliver, and we do, the same standards as the public sector. Clearly we can do it, because we do. We are not experiencing lack of control and order, as some would have us believe.<sup>[#265]</sup>

One of the things about this contract is that it says that the director shall decide on sufficient staffing levels to ensure contract delivery. I can staff this prison any way I wish to. I'm not hog-tied to the rank structure in HMP. I've invented new ranks over the last few years.<sup>[#266]</sup>

Directors talked about the inherent flexibilities in the private sector in having control over staff deployment. Directors emphasized that staff were encouraged to develop extra skills, with the effect that specialisms were integrated into the core staff group rather than having to be bought in. Interviews have revealed large discrepancies in the numbers of core specialist staff in public and private prisons. One director talked about receiving a visit from a governor of a closely comparable public sector prison.

He came round to visit. He was saying things like, 'how many nurses have you got?' I'd say I've 22 nurses. He said I've got 85. It was an extraordinary number. It may be that prisoners there were getting a much better healthcare service, but it certainly was not 85 nurses better. <sup>[#267]</sup>

Directors talked about the benefits of more normal (as opposed to normal-abnormal) working environments for private sector staff. For example, they emphasized the importance of more balanced gender mix, and the much greater prevalence of female staff was strikingly obvious during my own visits to these prisons. Directors also talked about their own autonomy to invest in staff training and development. The corollary to this is the more credible threat in the private sector in which staff are clear that if they abuse excessively their working privileges, they are likely to lose their job. As many public sector governors have pointed out, the private sector approach to staff disputes tends to be 'dismiss and settle later' rather than the public sector approach of letting grievance procedures drag on over long periods. As one official observed, private sector arrangements tend to be less susceptible to escalation and gaming by staff and management.

Within the public sector there are well-held game plans that everybody plays to. The game plans are not so clear in the private sector. You know, you play the game that way, the management plays the game that way, the POA play the game that way. Everybody knows what the rules are, we all go through the escalation procedures. It's been done for years. <sup>[#268]</sup>

Private officials have often talked about inherent obsolescence in the way many aspects of the system are designed. The Brixton reception vignette at the very start of this thesis provided regular topic for conversation during interviews with private sector officials. From a staffing perspective, directors pointed out that this was a good example of how it would make sense to use different types of staff in reception to carry out the repetitive work and redeploying more experienced staff in other more challenging roles. As one put it:

We are a lot leaner in process and staffing than they are, given the numbers we put out every day. We'll use a mix of prison officers, clerk grades, and support grades, whereas if you go into a public sector reception, you are predominantly dealing with prison officers. <sup>[#269]</sup>

One director talked off his own attempts to integrate reception procedures with prisoner escort roles.

The model that I was working towards was that I'm the escort contractor and I'm coming into your prison to collect a prisoner. All you need to do is bung them into a holding cell. I'll get hold of him, do his searching, get his property, and I'll take him. And vice versa at the other end. If I don't do that, all my staff are doing is sitting round drinking tea. Offer it to the Prison Service. It wouldn't cost my staff any time because my staff are there anyway. I used to have conversations at Pentonville, saying I'll do it for you, and the governor used to say, 'no, the POA won't have it'. I wasn't asking for money. They would have made a saving. <sup>[#270]</sup>

Another private sector executive reflected on cultural barriers inherent in the system which stop basic modernization of these logistical processes.

If they could get into the 20<sup>th</sup> century even and bar code the boxes where the kit is. It's not difficult stuff. We are bidding for PECS now,<sup>122</sup> and I was talking to them about making sure that everybody's property was such that we could use some form of detecting where it was. If you go to any Excel warehouse, stuff goes flying out, and it's not difficult anymore. But it's oh I don't know about that'. They would say what's the failure rate of that, about 3 per cent. Ooh, 3 per cent. Not sure we could tolerate 3 per cent. They are probably running a 20 per cent failure rate now. <sup>[#271]</sup>

Directors have also frequently talked about their autonomy to experiment with new technology. Most pointed out cases in which the private sector had led the way on integrating basic technology, for example, PIN numbers for phones, kiosks, in-cell telephony, and IT education. One former director reflected on apparent can-do approach to technology solutions in the private sector.

I got some people from one of our partners to talk to me about this new in-cell technology. I said what I'd like to do is have this cell as a study bedroom, with a computer in it, and restrictions on access. These guys looked at each other and said...looks pretty straightforward. But it just doesn't happen here. It'll be years and years before that would happen at a public sector prison like this. <sup>[#272]</sup>

Kiosks, in particular, have been used in certain private sector prisons, but they are not used in the public sector. As one former official put it, 'I couldn't think of a single reason why you couldn't put kiosks in the public sector. Not a single reason. It depends what you are getting the kiosk to do. If it is stuff like booking a visit, contacting a drugs

officer, it strikes me that that is quite useful. And it tends to reflect what is happening in the modern world'.<sup>[#273]</sup> Private prisons have begun to put telephone in cells in recent years, making the case that calls can be more easily controlled and reducing the likelihood of mobile phones coming into prisons. The installation of telephones in cells in public sector prisons has been continually opposed by ministers, yet they are constrained from intervening when phones are installed in private sector jails. One former private director characterized the kind of dialogue which takes place.

We'd say can we have [phones] in the public sector? The DG would say we'd love to give it to you, but ministers won't accept it. Why's that then? Public perception...holiday camp prisons. Ministers hate the fact it's in the private sector. They wanted us to take it out until we said to them we'd have to increase staffing again. And that would increase the price of the contracts. So they said ok, let them have it...but no more.<sup>[#274]</sup>

Governors often expressed scepticism about the motives for installation of new technologies in private prisons, arguing that it had much to do with 'looking good and ticking boxes' for the next retender stage. Most acknowledged however that they would welcome similar types of technological investment in their own public sector prisons. And many were generally resigned to the combined constraints of political sensitivity towards use of prisoner-facing technology in prisons, and perceived lack of willingness to secure capital investment for prisoner IT systems.

Directors and their managers are under hard-edged commercial pressures to deliver on the requirements of the contract and to do so in budget. As long as they are able to do so however, they can be shown to have autonomy to shape and manage capacity in their prisons. It is interesting here that directors have tended to stay in post for longer periods of time (an average closer to 3 to 4 years) than governors in the public sector. And private officials have suggested, if directors can successfully manage the basics of delivering the contract to budget, then the managerial freedoms create a much stronger incentive to stay in one place for longer. Of course, the relatively much smaller number of other prisons to which to move helps to explain longer incumbency of directors.

## **9.4 Conclusions**

Compared to the public sector, there is much that is similar and much that is different in the way in which the private sector has perceived and dealt with capacity issues during the last twenty years or so. The introduction of privately managed prisons has been controversial, and critics are inclined to highlight the risks of an unchecked profit-seeking private prison sector. The problem with these sorts of arguments is that private sector prisons have to operate in and as part of the wider public sector prison system, in competition and in cooperation, and hence we must understand their predicament as one of constrained autonomy, in much the same way as we have found with other actors in the system. Constraints come from the commercial, bureaucratic, logistical, and political context in which these prisons must operate. Within these constraints, however, we have seen that they have considerable autonomy in the way they relate to and manage capacity.

The commercial contract is key. It has done much to regulate excessive crowding in private local prisons, yet at the same time, it has also done much to hyper-normalize crowding too. The strength of the contract for directors is that provides some basis to resist what they may see as excessive requests for capacity stress. In simple terms, private prisons may be required to stretch capacity, but they will do so according contractually pre-specified payments. Furthermore, most directors in the private sector have transferred across from public sector, and have brought with them already heightened awareness of crowding as a problem, and strong orientations towards protecting their staff and their prisoners from excessive capacity stress. Despite these potential brakes however, local prisons in the private sector have been quickly and continually crowded over the years. Contractualizing acceptable increments of crowding lends credibility to the normalization process. In four out of six local private prisons, however, crowding has gone way beyond the 30 per cent notional limit usually pre-specified in contracts. This has direct parallels with pragmatic characteristics of stretch in the public sector. It also mirrors exactly the type of control through counterbalance seen in the relationship between CNA and Op Cap.

We have seen how crowding and capacity stress is subsumed within much broader issues of achieving performance outputs and outcomes pre-specified in the contract. If these performance requirements are met, crowding and capacity stress

becomes a secondary set of concerns. It is here that the considerable operational autonomies of the private sector are used as rationale or justification for demoting crowding and capacity stress to this secondary level of concern. Private sector officials have frequently talked about a much broader sense of operational freedom to shape their prisons, and this in itself is seen as underpinning an inherent ability in the system to deal with increments of capacity stress. Directors have talked about their freedoms to experiment with deployment of staff free from union pressure, to use facilities in more cost-effective ways, to encourage partnerships and links with community organizations, and to try new technologies or approaches. These autonomies are clearly real. They are also an important part of the narrative which normalizes, and to a large extent, deprioritizes the chronic condition itself.

It is however in the nature of constrained autonomy that it warns against attributing excessive instrumentality to individual parts of the system. I started this chapter by outlining five important constraints on the private sector and its prisons, each of which have had an strong impact in shaping the extent to which the private sector can and has ‘transformed’ the system. The commercial reality of the market and the need for contractors to be competitive has the effect of squeezing margins of profitability, and as commercial actors themselves have acknowledged, this basic imperative means that innovation and design will often (although not always) take a backseat to cost-efficiency of the design. The tighter the business plan and finance, the tighter the operational capacity, and less scope there is for radical innovation or transformation in the way the prison operates. Similarly, the logistical constraints emerging from the way the wider system operates are also considerable barriers to any kind of transformative change. The disruptive effects of population management, for example, are just as constraining on private prisons as they are on public. Finally, it is perhaps the most direct illustration of constraint that in recent years there has been a direct impetus from the centre to rationalize and standardize prison regimes. As directors have pointed out, this amounts to a direct incentive on private prisons (indeed, all prisons) to curtail their performance levels to something closer to a ‘standard minimum’ rather than an ‘aspirational maximum’ level. Again, this has been hardly the stuff of transformative change.

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<sup>106</sup> Former public and now private sector senior official [#232]

<sup>107</sup> The chapter is based on extensive interviewing with former or current private sector managers and prison directors from all major contractors in England and Wales, including Serco, G4S, Kalyx, GEO, and other firms involved in architecture and physical construction of prisons. A large majority of these private sector officials have transferred across from the public sector, and hence this provides a uniquely integrated perspective on capacity issues in both the private sector vis-à-vis public. I also carried out a focus group with contract managers and other senior officials at one large private sector provider.

<sup>108</sup> I use the term ‘Authority’ to refer to the contracting party, *i.e.* government, in the form of the Prison Service, NOMS, or the Home Office or Ministry of Justice. The specific location of contracting authority staff has shifted over the last two decades, from inside the Prison Service to inside NOMS.

<sup>109</sup> For brevity, I use the term ‘private prison’ to refer generally to prisons which are managed by the private sector under contract to the Home Office or Ministry of Justice.

<sup>110</sup> Ryan and Ward (1989) object to private prisons on the grounds that it constitutes excessive delegation of the ‘monopoly of legitimate use of force’ by the state to profit-making actors. Punishment inflicted on inmates is not only unjust. It is also that rewards accrue to penal entrepreneurs who administer the punishment (p70). These authors write, ‘advocates of privatization would retort that most of the people who work in the state penal system are paid for their labour, and that is just another profit motive. This argument ignores the distinction between those who sell their labour power and those who own and control capital; and it also ignores the fact that many of those who engage in the distasteful business of inflicting pain do so not simply for economic reasons, but in the hope of mitigating the full impact of what they see as a regrettable social necessity’ (p70).

<sup>111</sup> Stephen Nathan at the Public Services International Research Unit (PSIRU) based at Greenwich University, has published extensive and systematic financial and commercial information on private sector prison markets in the UK. This has been a vital source of information to researchers interested in private prison markets. It has provided extensive background information for my own work in this chapter on the development of the UK private prison market from July 1996 to July 2006.

<sup>112</sup> As Ryan and Ward (1989) suggest, ‘the most likely effect of privatization on prison regimes is [...] that private companies will tend to minimize their labour costs and rely on more capital-intensive forms of control.’(p74).

<sup>113</sup> *On Rye Hill prison.* In April 2005, the Chief Inspector of Prisons reported on an unannounced inspection of Rye Hill ‘very serious concerns about safety’ and staff turnover at ‘around 40% a year’. The report stated that ‘the situation we found at Rye Hill raises some important questions. They include: whether contractually agreed staffing levels are sufficient for a prison of this kind; what systems and pay structures need to be in place to support staff retention; and the effectiveness both of internal management systems within the prison, and of external monitoring and management’ (HMCIP, 2005, p10). *On Ashfield prison.* In April 2002, PPRI stated that Ashfield has been ‘plagued with staffing shortages and other problems since it opened’. In December 2001 the company was issued with an improvement notice for non-compliance with its contract. In May 2002, Ashfield was fined in excess of £250,000 and taken into Prison Service emergency management until the contractor could improve the situation (PPRI, 2002). Throughout 2003, Ashfield stabilized. A report by the Chief Inspector of Prisons in September 2003 wrote, ‘much work was needed to build, particularly as the staff remained relatively young and inexperienced and staff turnover, while slowing down, was still fairly high. No-one involved in overseeing, resourcing or monitoring Ashfield should imagine that the task is complete and support withdrawn’ (HMCIP, 2003a, p3). *On Dovegate prison.* A report by the HM Inspectorate reported about Dovegate that there was also a worrying lack of experience and confidence amongst a young, locally recruited staff, few of whom had any previous prison experience, and who were operating with low staffing levels and high staff turnover (HMCIP, 2003b, p3).

<sup>114</sup> In privately managed prisons, the equivalent role of ‘governing governor’ tends to be known as the ‘contract director’ or ‘director’. In this chapter, I use the term ‘director’ to refer to the equivalent of governing-governor in private sector prisons.

<sup>115</sup> Out of 20 interviewees with experience of working in the private prison sector, 14 had started their careers in the public sector, and had made the transfer across, bringing with them considerable professional experience and learned knowledge of running prisons.

<sup>116</sup> The extent to which private sector closed training prisons are able to select particular types of prisoners depends on their admission criteria. Private prisons tend to have less discerning admission criteria compared to public sector prisons, and so are less able to determine which prisoners they receive. This is compared to many public sector prisons which have built up often quite restrictive criteria over the years.

<sup>117</sup> Indeterminate sentences for Public Protection (IPP) were introduced by the Labour government in 2005 as a measure to deal with the most dangerous offenders. In theory, these prisoners would not be released back into society until they had satisfactorily completed a range of accredited programmes which would ensure that they were ready for release. The problem has been however that the probation and prison system have lacked the necessary resources to provide these programmes to IPP prisoners, with the consequence that many have been left stranded in the system even after their maximum tariffs have passed. By the end of 2009, around 5,800 offenders had received IPPs, but only 75 had been released with being readmitted into custody.

<sup>118</sup> In December 2010, after market testing, the decision was taken by the Minister for Justice Ken Clarke to transfer Birmingham prison from public sector management into private sector management. It will be run by the contractor G4S and staff will become employees of G4S under conditions of TUPE.

<sup>119</sup> Techniques have evolved for controlling gaming behaviour by the contractors. For example, threshold levels have increasingly been based on averaged capacity over an extended period of time to reduce the risk of gaming around the thresholds whereby one prisoner over a threshold triggers a whole new payment schedule.

<sup>120</sup> In this quote, DOM and RCM both refer to senior levels of management in the hierarchy of the prison system under the Director and Deputy Director Generals. DOM stands for Director of Offender Management. Since 2007, DOMS have reported directly to the Deputy Director General of NOMS, and are responsible for commissioning offender management services at a regional level. RCM stands for Regional Custodial Manager. This role replaced the former area manager, and covers similar management of prisons at a regional level. In the NOMS structure after 2007, RCMs report to DOMS.

<sup>121</sup> A study by the Home Office in 2000 found that, for the specific year 1998-99, selected private prisons provided around 11 per cent greater savings in terms of cost per prisoner costs compared to public sector comparators (HO, 2000). This government report should be treated with at least some scepticism given the political imperatives of private sector procurement in the early years of the Labour government.

<sup>122</sup> Prisoner Escort Services Contract (PECS). This is the range of regionally managed contracts for escorting prisoners under secure conditions in vans to and from courts, and between prisons.

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## *Chapter 9*

### **Chronic capacity stress - a function of governance dysfunction**

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*An endless series of static equilibria have been struck. People push and push until the opposing forces become the same strength, and they stay still. It is all the result of competing pressures. An endless series of natural equilibria which are constantly shifting as pressures change slightly. It's like trying to design a bit of geology. The forces are far greater than you can influence.*<sup>123</sup>

When the experienced governor of a large local prison tells you that you have to go back to 1877 to get to the roots of the problem of crowding and capacity stress, it is a pretty clear indication that the issues that you are dealing with have something chronic about them.<sup>[#276]</sup> In that year, the Prison Commission was established, marking what is widely seen as the beginning of the modern prison system in England and Wales.<sup>124</sup> The implication here is that as the system has grown into a large and centralized modern bureaucracy, it has somehow become less able to do the things necessary to impact on the lives of prisoners. The paradox is that in order for the system to have any chance of doing this in a systematic way, these processes of centralization and standardization have been a necessary function of the system's development into the modern era. Large modern bureaucracies, it seems, develop and grow often despite themselves.

By focusing on the last thirty years, we have seen how a large and complex bureaucratic system has sustained a chronic condition. Throughout this time, the prison system has developed, grown, and even improved. But it has done so in a way which has made it less able to do many of the things that it sets out to do. In this sense, it has been a story about how a large and modern bureaucracy can operate in a chronic mode, and the

dynamics which animate that. As I have tried to show, it is difficult to see chronic capacity stress (CCS) as anything other than a function of aggravating and compensating dynamics in the system. No one single factor or explanation appears sufficient to characterize the equilibria involved; indeed CCS appears to be a function of governance dysfunction, and the way in which the system finds equilibrium despite this.

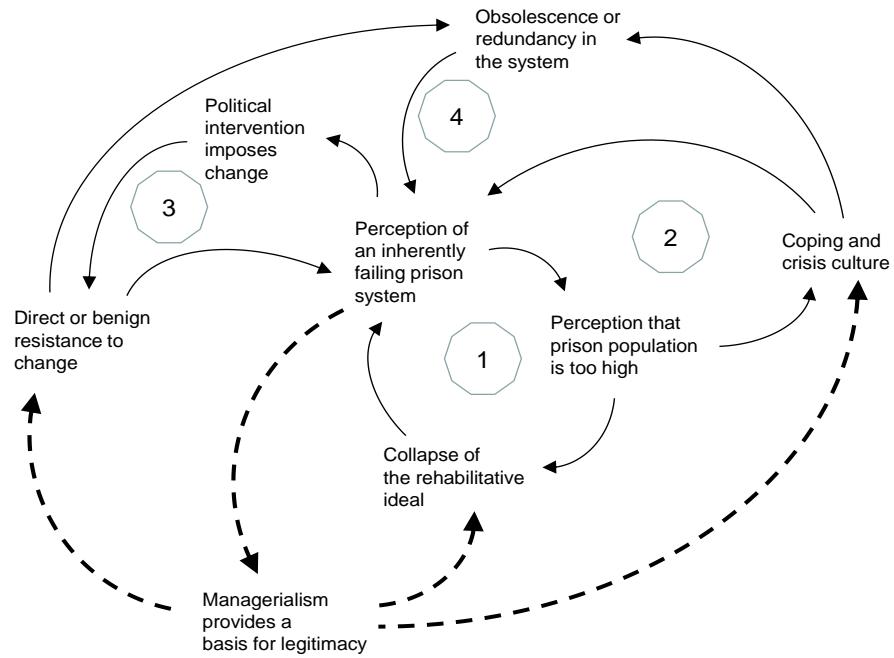
In this final chapter, I return to the *problematique* from chapter 2 and the theoretical explanations in chapter 1. These two opening chapters gave us a dynamic way of integrating theoretical approaches, and helped to shed light on universal and specific aspects of the chronic condition over thirty years. Also central to this approach has been the concept of ‘constrained autonomy’, analysed in empirical detail in the previous four chapters. Actors manage their own situations of constrained autonomy and adapt to them, and it is the overall equilibrium of this which determines how a system is able to sustain CCS. In order to understand the chronic condition, it is necessary to understand the system as a whole. And in order to speculate about prospects for breaking out of the chronic condition, it is necessary to see change as taking place in a balanced and complementary way across the *problematique*.

## **9.1 Return to the *problematique***

The *problematique* depicted a layered onion of four looped themes relating to CCS, and organized these themes inter-dynamically into a holistic governance-style approach. I have reproduced this in **Figure 9.1**. We can summarize its inter-dynamics as follows:

- [1] A ‘collapse of the rehabilitative ideal’ aggravates perceptions of an ‘inherently failing system’, and this relationship is further aggravated by perceptions that the prison population is ever too high for this situation to be reversed;
- [2] A ‘coping and crisis culture’ allows the prison system to function in response to ever higher prison population, yet in a way which feeds back into perceptions of inherently failing;
- [3] Political and policy interventions are imposed on the system in response to perceptions of failure, yet these in turn aggravate direct or benign resistance; *and*
- [4] Resistance and coping cultures lead to sustained obsolescence and redundancy in the system, which feeds back into perceptions of failure.

**Figure 9.1 The problematique rehearsed**



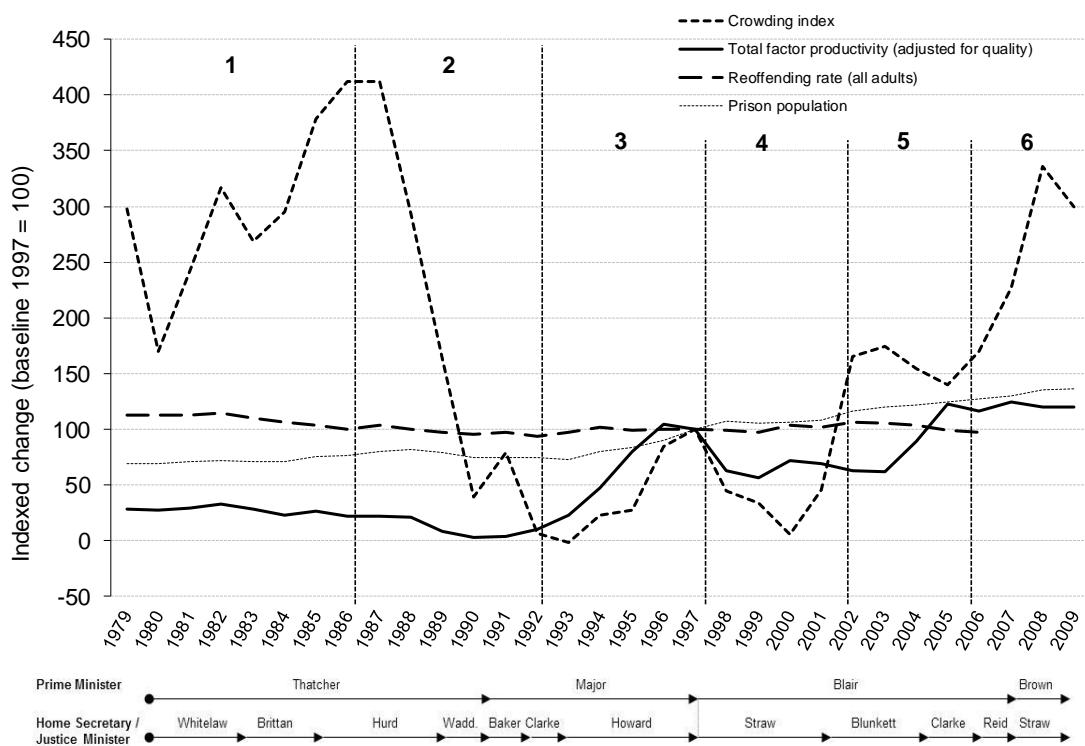
On the basis of six chapters of empirical analysis, we can reflect on how the problematique has helped us to shed light on CCS. It is important to emphasize that it was not meant as a blueprint or solution to this complex condition. It would be disingenuous to characterize the condition as 'complex', and then to offer some kind of 'hardwired' analytical model which claims to make it look simple. It was meant rather as a hypothetical device to organize the main themes prevalent in the literature, and to set out some important inter-dynamics which determine the nature of equilibrium. For it is in understanding the nature of this equilibrium, it seems, that we come to understand the nature of CCS and how systems sustain it.

At the base of the problematique is managerialism. We have seen how this has had countervailing effects, both compensating for CCS, and simultaneously, aggravating dynamics which help to sustain it. It has been integral in allowing the system to cope, and has been a driving force in performance improvements and better management overall. For critics who trot out the mantra that 'prison does not work', managerialism has at least offered a basis to show that prison has managed to work in at least some important ways. As one former top official reflected:

I think we've seen the end of brutality which occurred up to the end of the 1990s and the beginning of this century...although you can never say that you've removed that from prison for ever. That's a bad mistake because it means you are not looking for it. It's one of the endemic problems of running prisons. But we have a more decent service running in a more lawful way.<sup>[#277]</sup>

Managerialist change has been an important factor in quality-adjusted productivity rising steadily. And this has happened despite crowding rising almost to levels equivalent to the 1980s. The difference is that managerialism has underpinned a much more ordered and disciplined system, and has, to a great extent, helped to normalize acceptable levels of crowding. **Figure 9.2** reproduces analysis from chapter 3. **Table 9.1** summarizes some of the main changes in each of the six time periods labelled in Figure 9.2.

**Figure 9.2 Indexed rates of prison crowding and quality-adjusted productivity since 1979**



We have seen however that managerialism has done much to aggravate CCS. Its doctrines and cultures have pushed the system towards working at levels of capacity which are continually close-to-tolerance. Also, managerialist logic has provided important ways for the system to normalize deviance from established standards or rules. Operational Capacity (Op Cap) has been the classic illustration of this. We see a similar

dynamic at work in the way in which managerialist targets have been set up to avoid focus on rehabilitative outcomes. Performance targets have emphasized security, decency, and prisoner programmes, amongst other things, but at no point over the three decades, have individual prisons been held to account directly for their rehabilitative outcomes.

On the ‘collapse of the rehabilitative ideal’ (Loop 1), we have seen similarly countervailing dynamics. To talk in terms of a collapse of a rehabilitative ideal somewhat assumes that there was a time when a rehabilitative ideal, one which was meaningful and relevant to the modern day system, actually existed. The danger here is that we overlook that the fact that these issues were as complex and countervailing then as they are now. It is unlikely that there was ever a time when the rehabilitative ideal had its heyday, and to talk of its collapse is misleading. It is however entirely true that we have seen strong views that the prison system cannot be expected to be rehabilitative as long the prison population continues to rise as it has done over recent decades. Whether or not we have seen a ‘collapse’ of a rehabilitative ideal, we have clearly seen a link between pessimism in this respect and the rise in the prison population during this time. As one governor told me:

You are asking the wrong question. Instead of saying how can we make prisons more effective, the question should be how can we reduce crime and harm in society. There are actually far more ways of doing that than prison. Constructing the argument around prisons, works on an assumption that prisons are effective and ought to be used. <sup>[#278]</sup>

*A function of governance dysfunction*

**Table 9.1 Summary of important aspects of change, by problematique factors**

<i>Eight factors in the problematique</i>	1	2	3	4	5	6
	1979 to 1986	1987 to 1992	1993 to 1996	1997 to 2001	2002 to 2004	2005 to 2009
<b>Perception of an inherently failing system</b>	May Inquiry finds widespread failure	Demand and supply-side reforms - period of optimism. Riots and industrial action.	Michael Howard era, austerity, and 'prison works' doctrine	Focus on security after high profile prisoner escapes	Steady improvement in performance of the prison system – particularly security, decency and management.	
<b>Perception that the prison population is too high</b>	Relatively stable population, although critics argue that population is too high.		Rapid increase in the size of the short-term prison population (< 6 months). This levels off around yr 2000.		Prison population gradually rises despite levelling off in short-sentence prisoner population.	
<b>Collapse of the rehabilitative ideal</b>	Government announces 'positive custody' – critics argue that basic humane standards need to be met as a prerequisite of rehabilitation.		Reforms bring respite in capacity pressure – emphasis on rehabilitation after the Woolf inquiry.	Expansion of prisoner programmes and treatments.	NOMS prioritizes the reduction in rates of reoffending in the penal system.	Signs of reduction in reoffending rates.
<b>Managerialism as a basis for legitimacy</b>	Signs of early managerialist change.	Abolition of overtime and more focus on management.	More centralized planning and management, new agency, and first private prisons.	Growth of target culture, early release, and consolidation of private sector	Height of target culture, strong centralized coordination, and market testing.	Relaxation of target culture, 'close to tolerance' capacity, and regionalization.
<b>Coping and crisis culture</b>	Local prisons cope with very high levels of crowding, slopping out, weak industrial relations and staff abuse, brutal and unchecked regimes		More centralized management in response to crisis period between 1988 and 1991. Introduction of operational capacity standards	Emergency accommodation and tighter centralized management of the prison population.	Prison system run at increasingly 'close-to-tolerance' levels –target to run all prisons at > 95% capacity	Population crisis 2002
<b>Political intervention imposes change</b>	Post-May focus on modernization of the system and demand-side reforms.	Green papers lead to the 1991 CJA pragmatic reforms on demand and supply side.	Move towards more 'punitive' penal culture triggered by political shift and high profile cases of crime.	Expansion of private prison markets.	Political emphasis on more integrated penal system under NOMS. Attempts to modernize workforce, and build more cooperative arrangements with the Prison Officers Association.	Population crisis 2007
		Relative autonomy for Conservative Home Secretaries vis-à-vis Number 10 and the Prime Minister		New Labour emphasis on security and decency – political ambivalence on crowding and size of prison population.		
<b>Direct or benign resistance to change</b>	Industrial action and 'lock outs' at local prisons	Widespread industrial action in response to abolition of overtime	Political resistance to pragmatic reforms from Conservative party	Strong centralized management of the system – command and control. Officials and governors benignly resist pressure to absorb capacity stress.	National industrial action by POA in 2007	
				Political concerns over security breaches	Systemic reluctance to market test failing prisons.	
<b>Obsolescence or redundancy in the system</b>	Severe capital under-resourcing across the estate – prison building programme renewal. Excessive rent-seeking part of prison staff culture.		CNA shown to be an obsolete measure for management – measure for Operational Capacity introduced.		Limitations in digital era technology across the system – reliance on paper-based methods	Constraints on governors' ability to modernize management practices in prisons.

Note: This is not an exhaustive summary, but rather highlights key themes discussed in this research.

The paradox here is striking. It is illustrated by the public declaration of the Prison Governors Association (PGA) during 2009 which argued that prison sentences of less than one year do not work and could not be expected to have any rehabilitative effect (BBC, 2009). The peculiarity of such a statement lies in its wholesale negation by a professional group of its own instrumental impact. It is an artefact of fatalistic culture. Admittedly, not all governors supported the statement, but many did and it reflected a deep-seated tension in the system about legitimate expectations and impacts vis-à-vis rehabilitative goals. One former experienced observer summarized this paradox.

By wanting prison to be better, the real risk is that people become more comfortable with imprisonment. Resources get drawn into prisons, when they shouldn't be at all. Because it is not the best way or best place to spend them. It's not just a liberal paradox. It's a governance paradox. If you were looking for any kind of cost benefit analysis about where to spend money, it would not be in prisons. And yet, when people are there, there is a duty of care. There is a need to try at least to do something which makes a difference.<sup>[#279]</sup>

Despite this, we have also seen signs of a system which, in many ways, has focused more and more on achieving rehabilitative outcomes. The official line from senior NOMS officials, and occasionally from ministers, has focused heavily on the duties and goals of the system on rehabilitation. In pure managerialist terms, the goals of the NOMS, and by implication the prison system, have distilled down to the goal of achieving reduction in the rate of reoffending. Interviews with governors, prison officers, charities, and private sector firms, have all surfaced a great many examples of things which these actors do on a day-to-day basis to encourage rehabilitative outcomes. But they do so within the confines and the constraints of the system. As discussed in chapter 3, however, managerialism provides a basis for willing and designing policy outcomes, but it is also incorporates countervailing constraints, both from over-ambition and under-resourcing. The outcomes, as we have seen, have been neither complete success nor complete failure. The fruits of managerialism can be deceptive. NOMS can point to an 'evidence-based' reduction in reoffending rates, but seen in the wider context, this reduction has brought us back to a level of reoffending observed in the early 1990s.

The fact is however that we have a prison system, it is growing, and it is likely to be around in fifty years time. Hence, as the quote above suggests, there is a duty of care

and pragmatic obligation to resource and run the system in a way which at least gives it a chance of succeeding. The *problematique* has highlighted two interrelated dynamics, 'coping and crisis culture' and 'direct and benign resistance'. These are the nuts and bolts of the system, which are key aggravating and compensating dynamics which allow the system to function while sustaining CCS. The combination of maintaining inherent flexibility and strong command-and-control relationships throughout this period has been an important part of the coping and crisis culture. A great many interviewees have acknowledged the prevalence of coping attitudes throughout the system, and the tendency for the system to 'thrive' in moments of crisis. One former Prisons Minister characterized the problem.

The Prison Service seems to be unable to cope with success. We cope...just. We acknowledge the objectives, and then say unfortunately we can't make them work. But at least we cope. <sup>[#280]</sup>

Indeed, many have also acknowledged a kind of 'own worst enemy' syndrome, in the sense that coping and ability to handle crisis has itself been normalized. Furthermore, they have also acknowledged the peculiarities and weaknesses of these cultures in that they have allowed the system to sustain, and indeed at times, almost court CCS. As one highly experienced former governor and official put it:

If you were looking at this psychodynamically, if you were looking at the prison as a person, you would be very very worried. Because what it has done is that it has learnt from Strangeways, that if you have that kind of disaster, something happens. If you were trying to treat somebody psychodynamically, that is something that you would be wanting to avoid under all circumstances. The piece of learning that you don't want them to have is that bad behaviour actually leads to rewards. And that is what has happened in the Prison Service. <sup>[#281]</sup>

Although we have seen many examples of direct resistance to imposed change, it is the concept of 'benign resistance', which is important in understanding CCS. Coping cultures have tended to lead to resistance amongst actors, yet this resistance has not necessarily been the product of conflicts of interest, but merely the product of system constraints on actors' ability to cooperate. This is perhaps a conceptual weakness in the way the *problematique* is drawn, in that 'coping and crisis culture' should relate directly to 'direct or benign resistance'. But resistance may also be benign in that actors find

ways to deflect or diffuse expectations by reference to ‘conventional wisdoms’ or arguments that system constraints are too great for them to do much more. Often such arguments appear quite persuasive in a systemic context. We have after all seen above how prison professionals are often inclined to resist (and in such a way that one can understand their motivations) the idea that prisons should be judged on rehabilitative outcomes. For a start, it is difficult to measure and attribute causality to such outcomes. Also, systemic movement of prisoners around the system also disrupts continuity and links with outside authorities. Officials may not be singularly opposed to such aspirations, but they are likely to draw on rationales about inherent risks and constraints involved, and try to limit their own exposure to being evaluated on the strength of outcomes which appear beyond their control.

Finally, we have seen how coping cultures and resistance can aggravate obsolescence and redundancy. Sustained obsolescence reflects some degree of inability of the system to modernize or change in ways which reflect common practices in wider culture and society. The concept of CNA, for example, is an artefact of obsolescence, a standard which has stayed in the system despite the fact that many regard it as having little relevance in today’s local prison. Maintaining staffing ratios in public prisons which are considerably higher than staffing ratios in privately-managed prisons is another example. We have seen how the system has tended to hold onto ‘bossist’ cultures of management, and how this has cut across the development of more ‘chief executive’ styles of leadership and the ability of leaders to delegate. Also, the system has perpetuated technological obsolescence in many aspects of its administration. All of these examples show how systems can sustain and incubate obsolescence and redundancy. They are disorientating in a culture of managerialist under-supply, because they are themselves pockets of relative over-supply, component parts of the system which are on the one hand vital for the system to function, but on the other hand, properties of the system which suggest that there is latent capacity within, if only it could be realized or set free by some means of other. It is this perception which perpetuates the managerialist and political will to impose change.

The *problematique* has highlighted aggravating and compensating dynamics at the heart of CCS. And it is these dynamics which are crucial, I argue, to understanding crowding and CCS in the prison system, or any other public policy system for that

matter. But this discussion takes us only so far in understanding the ‘real’ dynamics of the system. It is all very well to think in terms of generalized concepts, and how equilibrium is shaped by them, but this is done at an abstract level, and does not tell us much about the predicaments of individual actors involved. Putting ourselves in the situation of different actors changes the way in which the problem is conceptualized, for they do not have the luxury of perspective from a great height. They are *in* the system, and view their own predicament from this embedded position.<sup>125</sup> It is necessary therefore to animate the *problematique* with this individual perspective. In doing so, we begin to see how all actors in the system, in different ways, have constrained autonomy. And constrained autonomy at an individual level is a key property of manageable and acceptable equilibria in the system as a whole.

## **9.2 Individual actors, constrained autonomy, and adaptation**

Constrained autonomy has been a key theme in understanding the extent to which actors can influence capacity. As chapters 5 to 8 have shown, actors must contend with a range of pressures in fulfilling simultaneous roles as principals and as agents. In doing so, they must adapt in order to synthesize and find manageable and acceptable equilibria over time. This is not necessarily a recipe for inertia or stasis, because actors have autonomy enough to influence change, do things differently, push things on, or resist things – but they do so within the broad constraints of their place in the system.

I have tried to illustrate how constrained autonomy and adaptation work as part of simultaneous principal-and-agent roles. It is useful now to try to bring these concepts into the overall *problematique*. **Table 9.2** summarizes constrained autonomy in each of its four ‘looped’ areas, and across each of the four actor levels. Looking down each of the columns in Table 9.2, we are interested in the overall equilibrium outcome across the four levels.

Let us consider the first column, the *collapse of the rehabilitative ideal*. As the previous section has discussed, the thesis as a whole, I hope, has already cast some questions over the nature of the concept. We must be cautious to what extent we accept it as an intrinsic characteristic of actors *per se*. There has been much to suggest in this research that actors at all levels do their best to encourage rehabilitative outcomes, but they are also aware of the constraints which the system puts on them, and sometimes

legitimately sometimes not, adapt their behaviour towards systemic ambivalence vis-à-vis rehabilitation. Some actors have been inclined to reject the idea outright. Many, however, acknowledge that the system could and should have more impact on rehabilitative outcomes, but for the constraints which limit the realms of possibility. Rather than being intrinsic, any ambivalence towards a rehabilitative ideal must, to a greater extent, be seen as contingent on the system which animates it.

Ministers have varied in terms of their views and efforts on rehabilitative reform over the years. Some have presided over relatively quiet prison systems or have had their terms in office dominated by other major policy issues. For those who have talked about having a go to reform the system around rehabilitative goals, most have found themselves stymied in their attempts. We have heard ministers talk about seeing their efforts unravel or dissipate as momentum is lost. Generally speaking though, ministers know that it is difficult to make the link between prison and rehabilitation. This has underpinned default low expectations at high political level on what prisons should or can be expected to achieve. Ultimately, there is an awareness that failure to rehabilitate prisoners is unlikely to undermine their political credibility. The corollary to this is that advocating rehabilitative reform runs the risk of being associated with being excessively soft on criminals. Or as some ministers have mentioned, it gives the impression that prison can be too successful in reforming offenders, and consequently increases the attractiveness of prison to sentencers and society. There is a peculiar logic here that prison, by design, must find a level of neither completely succeeding nor completely failing.

**Table 9.2 Constrained autonomy of four groups of actors**

	Four aspects of the holistic governance model			
	<i>Loop 1</i> <b>Collapse of the rehabilitative ideal</b>	<i>Loop 2</i> <b>Coping and crisis culture</b>	<i>Loop 3</i> <b>Direct and benign resistance</b>	<i>Loop 4</i> <b>Sustained obsolescence and redundancy</b>
<b>Senior ministers in government</b>  <i>(Chapter 5)</i>	Some ministers have tried to reform the system but have seen their efforts unravel. Aware that prison reform is politically high risk for low returns. Ministers have 'default low' expectations on what is possible.	Benefit from presiding over a quiet, and secure prison system. Tend to get involved during crisis periods and rely on their top officials to run the system otherwise. May benefit politically from dealing with crisis.	Ministers may struggle to maintain political will at highest levels of government. They may also encounter direct or benign resistance from top officials, staff, or staff unions.	'Second order' concern for top ministers. Off senior ministerial radar. Prisons minister likely to be involved. Argue that funds are limited and bemoan failed implementation of large projects.
<b>Senior officials in the Prison Service and NOMS</b>  <i>(Chapter 6)</i>	See their role as primarily responding to ministerial priorities and 'making the system work'. Reluctant to accept that prison should be judged on rehabilitative outcomes, citing population pressures and difficulties in attributing causation.	See their priority as delivering quiet and secure system. Mediated through meeting targets. Seek to maintain flexibility of options to aid coping. Maintaining perception of coping also helps their cause politically.	Contend with political interference and uncertainty, particularly during crisis periods. Also contend with direct or benign resistance by staff and unions, and shaping behaviour by governors, in response to reform attempts.	Recognize obsolescence but tend to be fatalistic about the chances of securing funds for modernization. Interest in resisting professional 'voice' of governors. Anti-technology cultures at senior levels.
<b>Governors and prison staff</b>  <i>(Chapter 7)</i>	Claim that there is much that can be done to improve rehabilitative role of prison. But that they are constrained by crowding, limited resources, and the disruptive effects of national coordination of prisoners.	Governors respond to command and control. Professional ethos that prisoners must be accommodated. They find ways to cope with ageing or inadequate facilities, and to stretch capacity.	Governors may attempt to resist command and control but often in vain. Also resist excessive managerialism and performance bureaucracy. They contend with resistance staff cultures.	Governors acknowledge their own beleaguered collective professional status vis-à-vis senior officials. Also fatalistic about their ability to affect obsolescence as it is seen as a systemwide issue.
<b>Private sector firms</b>  <i>(Chapter 8)</i>	Claim there is room for innovation but that they are constrained by delivering equivalent standards as the public sector. Also constrained by tight profit margins in the contract.	Cope with the same population pressures, but have some protection through the contract. Maturing prisons now less likely to struggle with high staff turnover and inexperience.	Less constrained by union resistance and public sector rules. But they claim that public sector cultures impinge on their ability to innovate or find cost-efficiency savings.	Less visible obsolescence as prisons are newer and better designed. Cultures seem altogether more 'normal'. But claim that they absorb obsolescence as part of the public sector system.

As civil servants, senior officials emphasize their role as one of responding to ministerial priorities. If ministerial priorities are not specifically focusing on rehabilitative goals, then they perceive that it should not be their role to redefine priorities on their minister's behalf. Some top officials have been reluctant to accept that prisons should be judged on outcomes. Most have said that in an ideal world it would be nice to focus more on rehabilitation, but the imperatives of running the system at close-to-tolerance have occupied most of their time. As one former NOMS officials reflected:

Of course the whole system is operating under a particular degree of constraint. I think it always will. It is just a question of degree. I can certainly see that the system is absolutely creaking and people are being moved up and down motorways just to get through the week. As it was at its worst. So yes, it is quite tough to manage some of the resettlement stuff.<sup>[#282]</sup>

Amongst governors and staff, we have found more inclination to talk up the rehabilitative role of prisons, and their responsibility in doing what they can locally to reduce reoffending. But again, arguments here emphasize the inherent limitations of this activity, due mainly to limited resources, continued 'churn' of short-term prisoners, and the associated disruptive effects of national population management. In the private sector, directors have seen themselves as freer to experiment with rehabilitative outcomes, and have been inclined to see crowding as less of a constraint. However, constraints for the private sector have come mainly from the pressure on these prisons to operate as part of a public sector system, as well as the very real constraints of their own financial and commercial expectations.

We have seen signs of *coping and crisis culture* at all levels of the system. Senior ministers perceive the importance of presiding over a politically quiet and secure prison system, and in doing so, rely heavily on the assurances of their officials that the system is coping adequately. Ministers (and the PM) have been closely involved in capacity issues when acute crisis occurs. Indeed, we have seen quite direct examples of ministers overseeing capacity management during crisis periods. Top officials acknowledged that they would use whatever tools they had available in this respect to strengthen their case with ministers and Treasury. Many have pointed out that maintaining a perception of coping and crisis in the system has also helped their cause politically. An important part of coping has also been having flexibility in measures and standards, which has also allowed officials to rationalize and legitimate increments in capacity stress.

The system's ability to cope with a rising short-term prison population has meant that the costs of capacity stress have been pushed down the system, and governors and staff in public and private prisons are expected to absorb these costs, not to mention, prisoners themselves. Euphemistic terms such as 'disinvestment' signal a lowest common denominator approach to scaling down costs and coping with increased demand. Also, governors have demonstrated strong professional ethos that they are geared towards finding a balance between accommodating requests from above and doing their best for staff and prisoners. Governors' complaints about inadequate resourcing, ageing facilities, disruptive effects of national population management, and bureaucratic overload from performance management systems, all feed into their perception of coping. Directors of private prisons have also shown similar inclinations to want to accommodate prisoners, although increases usually come with increments in revenue through the contract. The capacity of the system as a whole to cope with these pressures shapes the tendency for senior ministers to expect and rely on further ability of the system to cope.

Although coping and crisis culture is visible at all levels, the idea that it is a pure coping culture seems excessive. Pure coping systems do not tend to achieve performance improvements of the kind seen during the three decades. Also, interviews have shown that actors at all levels of the system do not see themselves as permanently coping. Coping is therefore complemented by actors' inclination to want to change the system through instrumental intervention, and the *direct and benign resistance* which is generated in response. Again, this is visible at all levels of the system. To varying degrees, senior ministers have experienced resistance from higher echelons of government, particularly from the Prime Minister's office under Labour governments (apparently much more so than under Conservative governments). The pragmatic reforms under Hurd, Waddington, and Baker in the late 1980s and early 1990s did much to reform the penal system, and many have pointed to this period as marking the beginning of a more optimistic period. Resistance from Conservative back benches, and a subsequent move away from specifically deflationary demand-side policies, however, led to the return of crowding throughout the second half of the 1990s.

Top officials have reported resistance from above and below. They have had to contend with risk averse attitudes from ministers, or political pressure to find ways of stretching existing capacity. We have seen how governors have sought to resist

command-and-control dynamics, often less by direct resistance, and more often by shaping the use of capacity in their own establishments. Governors have also frequently talked about the dynamics of changing resistant staff cultures in their prisons, particularly large local prisons in which unionized influences have tended to be dominant. Private sector prisons have tended to be less constrained by entrenched staff cultures.

The final component relates to *sustained obsolescence and redundancy*. At ministerial level, these tend to be seen as ‘second order’ concerns, ‘matters of operation’ rather than of politics or policy, and ministers have tended to distance themselves from acute failures resulting from or involving obsolescence. Manageable obsolescence in the prison system does not tend to become a major priority for senior ministers unless it has acute crisis implications. Top officials have commonly recognized obsolescence and redundancy, and how this has led to interventions such as imposing privatization, market testing, performance improvement plans, or tightening of output targets or standards. Governors generally share broadly fatalistic views about their own ability to impact on technological, infrastructural, and cultural forms of obsolescence in the system. And, for many officials, processes are often seen as too complex to automate. Benign resistance to modernization has self-fulfilling characteristics, as systems naturally incur obsolescence over time, yet they are also seen as critical to the operations of the system. Benign resistance is also encouraged as actors in the system develop largely fatalistic views about obsolescence.

Obsolescence tends to be much less visible in the private sector, largely because these prisons are much newer, designed for purpose, and are freer of many of the entrenched cultures and ‘eccentricities’ found in the public sector.<sup>126</sup> As chapter 8 has illustrated, private prisons tend to reflect more ‘normal’ environments, much closer to current societal practices in terms of the look and feel of the physical environment, and the cultures of work and opportunity available for prisoners. Staff cultures also tend to be closer to more normal expectations of modern firms or agencies, in terms of a more equitable gender balance, positive incentives for staff to improve their skill levels, and negative sanctions for staff who serially under-perform or engage in disruptive practices. As one private director put it, ‘normal is good in prisons, because you are always managing the abnormal. You are always trying to change the abnormal into normal’.<sup>[#283]</sup> It is important here not to exaggerate positive attributes of private prisons. As we have

seen, some private prisons have continued to struggle with operational instability, staff under-supply, and inexperience.

In each of these four loops, the overall equilibrium must be seen as the outcome of countervailing effects of interactions across different levels of actors. This is in contrast to seeing the problem as the product of failing of one particular group. To see the chronic problem as the failure of ministers, for example, is to overlook the fact that ministers must operate in conditions of constrained autonomy themselves, and are likely to adapt their efforts and commitments according to their own perceptions of where the limits of constraint and autonomy lie. Constrained autonomy is determined upwards as well as downwards in the principal-agent chain. For example, weak collective professional status of governors is likely to complement strong top-down command-and-control cultures. The characteristic of one is defined by the nature of the other. The conclusion is that these dimensions of chronicness must be looked at in relation to each other. They must also be looked at in terms of possibilities and limitations which constrained autonomy places on the individual actors involved. And the outcomes of the system as the equilibrium outcome which is produced. CCS must be seen in this light – as a property of the whole system, its inter-dynamics between constrained and autonomous actors, and the continual equilibria which are sustained by these dynamics.

### **9.3 Theoretical implications of the holistic approach**

I have tried to show that we need something like a holistic approach in order to understand CCS. Single theoretical explanations do not seem sufficient in the context of a large and complex public policy system in which different factors interrelate in compensating and aggravating ways. This raises questions about the extent to which theoretical implications can be drawn. Can there be such a thing as a theory of CCS? We may be able to recognize chronicness. And even define it. But to what extent is it possible to develop theories about its causes? Holism has provided a way to organize and guide our approach methodologically and analytically. But this holistic approach does not, it seems, add up to a theory. It seems necessary to relax the demand for theoretical parsimony in order to make space to understand the condition as a property of a governance system as a whole, its countervailing dynamics, and resulting equilibria.

Let us discuss first the implications of this research for NPM.<sup>127</sup> I have shown that NPM has been a crucial part of story during the last thirty years. We have seen how NPM has tightened the system – partly making it more able to manage and cope with capacity stress, yet at the same time, imposing constraints, both perceived and actual, on realization of more ambitious value-based goals. Conclusions about NPM principles of efficiency and effectiveness seem far less clear cut in this light. There have been gradual improvements in quality-adjusted productivity, but NPM has allowed the system to normalize considerable obsolescence and redundancy beneath the surface. Changes which have allowed the system to become more effective have also apparently rendered it less effective in other ways. The rapid rise in the short-term prison population is an example of how environmental pressures can change while the goals and the design of the system grow out of kilter. They are not out of kilter sufficiently for the system to collapse, but enough for the system to have to find ways of coping and resisting in order to function.

Constrained autonomy has shown the limitations of another key NPM principle, the introduction of competition into a public sector bureaucratic system. Clearly, the private sector has grown, and these new markets have provided a basis for competition and innovation. Indeed, the allocation of relatively equal market share across three competing firms suggests that government has shaped the market to avoid severe imbalances or monopoly (although it is still oligopolistic). Growth, however, must be seen in the context of the system, and the system has had constraining effects on competition. In many cases, this has played an important part in controlling private sector rent-seeking, and in encouraging, as far as possible, a standardized service across public and private. Indeed, there is evidence that the need for some degree of parity of service between public and private has meant that private prisons have had to rein in their own outputs and performance (according to private directors at least). Further constraints on competition and innovation are also widely acknowledged. Benign resistance within the system to expansion of competition goes some way to explaining this. Also, the difficulties which government has had in making outsourcing attractive enough for the private sector. And the fact that public sector prisons have shown that they can radically improve their performance (*i.e.* activate latent capacity) also explains

why the existing public sector market share has been broadly resilient to private sector challenge.

Constrained autonomy has implications for the credibility of the NPM idea of separation of policy and operational functions, and devolution of operations to managers in the system. Looking at the system as a chain of simultaneous principal-agent relationships, in which each actor must look after their own equilibrium, the idea that policy and operational functions can be meaningfully separated out seems simplistic. From an empirical perspective, we have seen that the relationship is clearly more nuanced, how ministers have been inclined to get involved in the minutiae of capacity management during times of crisis. And we have also seen how operational actors have been able to develop considerable *de facto* power by maintaining an ‘operational veil’ over capacity management.

Constrained autonomy has also shown how systems incorporate hybridized (or ‘clumsy’) forms of standards and mechanisms to legitimate performance. NPM principles have tended to emphasize a transition from *ex ante* to *ex post* mechanisms in this respect, but as we have seen, the prison system has sustained both types of mechanism, and has shown that in reality, such characterizations of clean transition are again too simplistic. The research has also highlighted the dynamics of constructed legitimacy which is created through standards and target mechanisms, and how these provide a discourse and architecture which helps actors at all levels in the system to manage their constrained autonomy. Meeting targets allows actors to demonstrate success or failure. It also allows actors to normalize and legitimate deviance in other areas not covered by target regimes. Revising targets allows actors to normalize deviance in areas which are subject to target regimes.

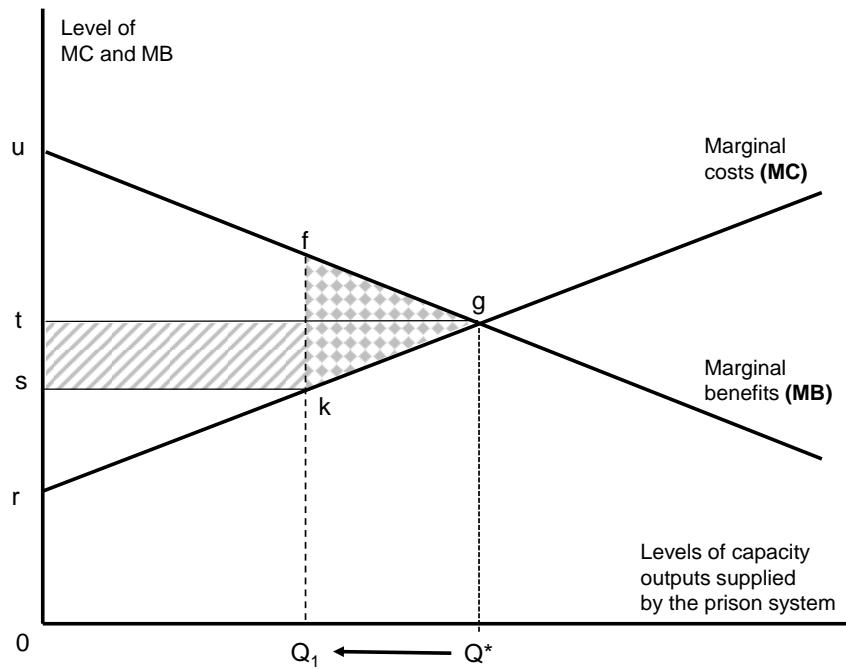
This broadly holistic, governance-style, approach has allowed us to see the interplay between different strands of theoretical explanation, particularly interplay between strategic actor and cultural dynamics. Take, for example, a simple description by a deputy governor of the dynamics involved in agreeing to receive prisoners into the prison after the reception has closed. This is one tiny illustration, but it shows the nuanced interplay in the way in which actors adapt to and finesse their own constrained autonomy.

There is some theatre in it. The duty governor is seen to stand up and say no, the bus is late, and we are not going to take these prisoners. Pop Man then either rings the governor or me. Are you prepared to order them in? I will always say yes. The alternative is that these hungry prisoners have nowhere else to go. The duty governor and the staff know that I will do that. It is everybody retaining their own position. And they are happy to do it with a bit of grumbling if they feel the area manager has ordered it.<sup>[#284]</sup>

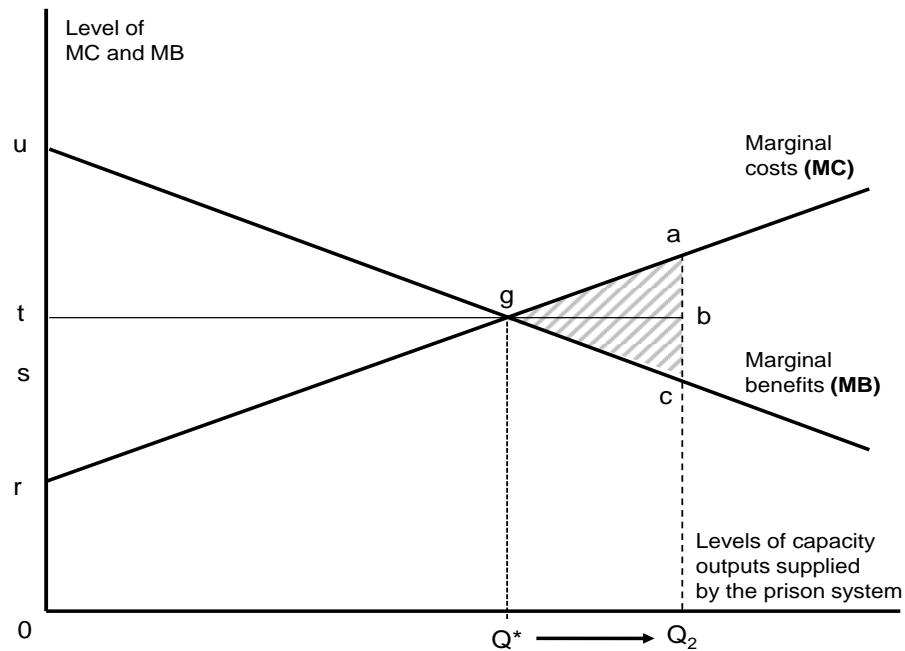
Constrained autonomy is likely to cut across or dilute pure concepts of intrinsic self-interest. These are not words of an official behaving in purely self-interested ways. There may be an intrinsic ‘self-oriented’ interest in wanting to find a resolution to the situation, but the content of finding a resolution, *i.e.* finessing constrained autonomy, involves a mix of strategic and cultural factors. Self-interest here must be seen as contingent on this mix. As this micro-example suggests, we must factor in motivations which emerge from the inclination to make the system work. In this case, the duty governor must manage a range of cultural dynamics – hierarchical, egalitarian, individualist, and fatalistic – and do so adaptively to maintain some degree of equilibrium in his own situation at that point in the system.

**Figure 9.3 Fallacy of a linear conception of under-supply and over-supply**

**(a) System pushes towards under-supply through stretching and squeezing**



**(b) System sustains over-supply in the form of obsolescence and redundancy**



The *problematique* and constrained autonomy have interesting implications for economic theory. We have seen in the opening chapter how rent-seeking and bureaushaping theory provide explanations for under-supply in public policy systems. These are often presented in opposition to ‘budget-maximizing’ explanations, which predict that bureaucrats, and by implication, bureaucratic systems will tend towards situations of over-supply (Niskanen, 1998). These economic theories conceptualize outputs in linear terms, as existing on a continuum around a point of optimal equilibrium. **Figures 9.3** depicts this linear conceptualization of (a) under-supply ( $Q_1$ ) or (b) over-supply ( $Q_2$ ), both around an equilibrium point ( $Q^*$ ) along the  $x$ -axis continuum.

But the empirical findings from this research, particularly countervailing dynamics in the *problematique*, raise some tricky qualitative questions for this linear conception of supply. The linear conception of output supply in Figures 9.3 suggests that one is either in a situation of under-supply at  $Q_1$  or in a situation of over-supply at  $Q_2$ . The implication here is that one cannot be in two places simultaneously. CCS would clearly be associated with the position at  $Q_1$  given that capacity stress denotes some kind of shortfall in supply rather than a surplus. This would be a perfectly acceptable way of characterizing the dynamics in individual principal-agent relationships. But it seems there are some problems with this linear conception when talking about the equilibrium in the system as a whole. For at the heart of the *problematique*, countervailing dynamics tell us the system can sustain situations of relative under-supply and over-supply at the same time. In other words, both dynamics are part of the same condition of CCS.

In Figure 9.3(a), we see the dynamics of under-supply. At all levels, and within the confines of their constrained autonomy, actors find ways to shape, stretch, and squeeze the system, and push the costs of doing so down through the system. But, at the same time, an important part of CCS has been sustained obsolescence and inefficiency in the system, and in economic terms, this can be seen as a form of relative over-supply resulting in loss of benefits to the system and to society in general. This is signified by the shaded area *gac* in Figure 9.3(b). These are two qualitatively distinct and separate positions, which as this research has shown, can be sustained simultaneously in the same system. Furthermore, when looked at in this dynamic way, they appear to be inextricably linked albeit dialectically, in that under-supply can engender continued over-supply, and vice versa. The paradox here is that the system is both under-supplied and over-supplied

simultaneously, but in a way which does not allow for an equilibrium to be drawn between them. Given these two separate dynamics in the same system, it makes no sense at all to take the average between them and settle on the point  $Q^*$ . This would be the graphical equivalent of the expression ‘two wrongs do not make a right’. A linear conception of supply is therefore not sufficient in a system which incorporates simultaneously countervailing dynamics of under- *and* over-supply. Only by looking at CCS as specifically a ‘system’ problem is it possible to see this inherent incoherence in such linear economicistic approaches.

Constrained autonomy highlights a further potential fallacy at the heart of economicistic explanations. The normative basis for these explanations is individual actors. But the problem is that these tend to be a particular abstracted type of individual actor, which is able to step back from and think strategically about their position in the system. In reality, however, actors are rarely if ever afforded the luxury of the economist’s viewpoint. Horn’s transaction cost model, for example, has much in common with the concept of constrained autonomy, in the sense that he views strategic actors as attempting to engineer an optimal balance between decentralizing and centralizing measures. Where this comes apart from the concept of constrained autonomy, however, is in suggesting that this balance can be something which is engineered *by design*, rather than something which happens *by default* as an outcome of constrained autonomy of all actors in the system. Management economists have argued that organizations can be ‘efficiently fickle’ (Nickerson and Zenger, 2002), in the sense that they find long term optimality by sustaining acceptable forms of short-term sub-optimality.<sup>128</sup> This has intriguing implications for thinking about how a system sustains sub-optimal states over the long term. But again, this sort of approach assumes that these actors have a sufficient degree of strategic instrumentality over the system in order to be able to engineer these outcomes. Constrained autonomy suggests that they do, but only to a point.

The research highlights limitations of cultural explanations discussed in the opening chapter. Culturally fatalist concepts such as ‘impossible jobs’ and ‘permanently failing organizations’ are shown to have general ‘mood’ value, not least because they provide ‘high impact’ concepts which are immediately evocative of particular syndromes of chronicness. We can recognize aspects of ‘impossible jobs’ and

‘permanent failure’ as part of CCS in the prison system. There is however much to suggest that this prison system has been anything but ‘permanently failing’, and has shown in fact how strategic and persistent instrumental action over an extended period can gradually bring about a great many improvements. Most top officials may be inclined to recognize elements of ‘impossible job’ in their work over the years, but they would reject the inherent pessimism implicit in these two concepts. As I hope this research has shown, the system is more complicated and has shown elements of improvement through instrumental design and will.

Hood et al.’s (2004) comparative study of prison systems examines the idea that cultural ‘clumsiness’ – *i.e.* cultural hybridity – is a key characteristic of successful control and accountability. They show that a ‘clumsiness deficit’ in the prison system is caused by ‘racking up of oversight without competition’ leading to ‘accountability overload without guaranteeing quality or robustness’ (p204). As a summary of the key pathologies highlighted in this research, this cultural diagnosis is not bad at all. We have seen a stymied growth in competition, as well as complaints of bureaucratic and managerialist overload. Yet, from an empirical standpoint, there is much to suggest that hierarchical oversight has in fact had a strong impact on quality and robustness of the system. Strong emphasis on command-and-control, performance management, and beefed-up inspection,<sup>129</sup> have led to a much tighter and more disciplined system. From a conceptual point of view also, constrained autonomy has demonstrated a high degree of intrinsic self-equilibrating ‘clumsiness’ of the kind thought to be showing ‘deficit’ in Hood et al.’s diagnosis.

The research has shown that there is a fine dividing line between strong command-and-control, which is able to get the system by the scruff of the neck and improve it, and excessive command-and-control, which ends up stifling and constraining the system’s ability to realize its various goals. (This may be Horn’s dilemma in a nutshell). In both cases, the hierarchical cultures may look the same, but they imply different outcomes (from the perspective of different actors in the system). In the opening chapter, we have discussed the trade off between ‘reliability’ or ‘resilience’ on the one hand, and ‘anticipation’ or ‘tightening’ on the other (Landau, 1969; Landau and Chisholm, 1995; Wildavsky, 1988), the implication being that public sector systems have tended to move towards the latter of these two. This implies a shift towards

excessively rule-based and nailed-down processes, rather than more ‘loosely-coupled’ and agile arrangements. Again, the countervailing dynamics in the *problematique* and constrained autonomy raise questions for these dualistic conceptions of reality. We have seen how aggravating and compensating dynamics can potentially have positive or negative implications for the system. We can think in terms of good and bad slack, or good and bad tightening. **Table 9.3** illustrates these outcomes.

**Table 9.3 Positive and negative implications of redundancy and slack**

	Redundancy and slack	Running at high capacity
Positive implication	‘Loose coupling’ and flexibility	Lean systems
Negative implication	Obsolescence and inefficiency	Inflexibility and tightening

Prison crowding and CCS, it seems, is an example of all of these things, and the outcome of the equilibrium between them. The *problematique* has shown us that the prison system, indeed any public policy system, can incorporate aspects of all four of these potentialities, and it is difficult in the context of the system to draw a line between one and the other. Indeed, these four potentialities exist dynamically in relation to each other, and hence attempting to draw a line between them, or see them in artificially dualistic terms, rather undermines this basic point. The prospect therefore of instrumentally engineering good slack or tightening, without the risk that you perpetuate the bad kind, is fraught with uncertainty. To say that public policy systems do too much of one and not enough of the other blurs the fact that both are constituent parts of the same equilibrium.

#### **9.4 Prospects for breaking out of the chronic condition**

It is in the nature of chronicness that it is a function of aggravating and compensating dynamics in a system. As the *problematique* has shown, these dynamics are inter-linked, and they feed into sustaining equilibrium. If there are no single causal factors which explain this condition, then it is likely that there will be no single remedies which will

help to alleviate it. Although single remedies may help to trigger or to facilitate alleviation, the system approach suggests that change would have to happen in a balanced way across all or most areas of the *problematique* in order for the chronic condition to be reversed. There needs to be a degree of ‘complementarity’ across different measures. As Roberts (2004) explains, ‘two choice variables are complements when doing (more of) one of them increases the returns of doing (more of) the other’ (p34). Complementarity ‘gives rise to systems effects, with the whole being more than the sum of the parts (in a precise sense)’ (p37). Building the right kind of complementarity into the system, therefore, lies at the heart of breaking out of the chronic condition. In these final pages, I discuss the prospects for doing this.

The countervailing influences of managerialism is as good a starting point as any. We have seen in recent years clear signs of transition away from NPM and some of its more constraining aspects. Dunleavy et al.’s (2006) ‘digital era governance’ paradigm provides indication of what this transition has entailed – processes of ‘reintegration, needs-based holism, and digitization’. These three factors are thematically interrelated. They may be partly seen as an antidote to the constraining effects of NPM. They may also partly be seen as a reflection of public management systems responding to fundamental changes in the way modern societies operate. Either way, the prison system has shown signs of change ‘away from itself’, with the creation of NOMS, focus on end-to-end offender management, and attempts to digitize information systems. As Dunleavy et al. point out, transition away from NPM has been variegated, in the sense that some aspects of NPM have persisted or intensified, while others have stalled or gone into reverse. We have seen strong signs of kind of transition in the prison system.

This thesis has focused on thirty years from 1979 to 2009. The new Conservative-Liberal coalition government from May 2010 has however provided new political emphasis on some key aspects of the *problematique*.<sup>130</sup> Central to the new approach has been the declaration of intent for a ‘rehabilitation revolution’, a radical policy prioritization of rehabilitative outcomes across the penal system (Conservative, 2008; MoJ, 2010a)<sup>131</sup> NPM-style incentivizing mechanisms have been applied directly to rehabilitative goals, introducing pilots projects for ‘payment by results’ schemes in private prisons which aimed to use social enterprise and ‘social impact bonds’ as means for creating commercial incentives for producing rehabilitative outcomes (Bolton &

Savell, 2010; Nicholson, 2011). Interestingly, for the first time ever, government published statistics on reoffending rates for individual prisons. This represented early steps towards strengthening accountability between individual prisons and their localities, as local communities and their authorities would be able to assess the quality of rehabilitative outcomes of their local prison. This represents an application of NPM-style ‘league table’ accountability to prisons, something which has been widespread in schools and hospitals for many years, but completely lacking in prisons.

Feeding this shift in emphasis into the *problematique* would suggest a major challenge to what has been labelled the ‘collapse of the rehabilitative ideal’. But as history reminds us, this is not the first time that a new government has set out to reform the system. As the *problematique* has illustrated, this system-wide change depends on finding and sustaining complementarities across other important factors. And this is not easy. As the experienced academic Anthony Bottoms points out:

When I hear people talk about the ‘rehabilitation revolution’, and assume that it is going to be easy, then I start getting worried. The history of rehabilitation is certainly not awash with instant success stories. It has been a long hard slog. Given the history of rehabilitation, it would be very foolish to expect instant results (BBC, 2010).

The *problematique* provides the basis for caution. Managerialist pressure to run the system at continually high levels of capacity is unlikely to change, particularly in an era of fiscal austerity in which NOMS is required find 25 per cent reduction in operating costs by 2014. Assuming the prison population remained at the same level, the system would continue to be heavily reliant on the systematic movement of prisoners. Creating more capacity in London and the South East may reduce this pressure, but fiscal tightening makes the prospect of large scale building in the London area unlikely. For a start, the dilemma is that ‘payment by results’ schemes would be contingent upon a reliable method for attributing rehabilitative impact on prisoners to individual prisons. If short-sentence prisoners are continually being moved around the estate, something that has been a major part of the system’s coping mechanism, then it would be difficult to see how attribution of rehabilitative impact could be isolated. Furthermore, the decision of which prisoners to move on overcrowding drafts has been left to individual prisons, and without central direction, there would be even more incentive than there currently is for

all prisons (public *and* private) to cream-skim the easiest prisoners and send on the hardcore to other local prisons.

Benign resistance to being evaluated on the strength of rehabilitative outcomes would also persist. Even if the attribution problem could be solved, and if these direct incentives could be incorporated across all private sector prisons, this would still only cover no more than, say 15 per cent, of the entire system. Similar market incentives would have to be applied to public sector prisons. As we have seen, however, the difficulties of transposing market-based mechanisms into public sector institutional settings are considerable, even if public funds could be found in order to set up public prisons as commercial investors. One further dynamic effect of creating new institutional points of focus for rehabilitation is that existing actors in the system, unless they are themselves involved as ‘investors’, are likely to deprioritize their own commitment to rehabilitative outcomes – a classic organizational response resulting from the likely perception that rehabilitation becomes something which is seen as being dealt with elsewhere.

Of course, the dynamic effects of the *problematique* potentially work both ways. Small changes in emphasis may have proportionately larger complementarity effects across the system. This new prioritization of rehabilitative outcomes at political level will likely push governors and directors to prioritize rehabilitative performance of their prisons, and work to keep short-term prisoners in one place for the duration of their custody. Also, focus on rehabilitation is likely to give governors increased influence up the chain, and confidence to challenge excessive command-and-control cultures. As governors and directors become more directly incentivized through the system to focus on rehabilitative goals, they will challenge other constraints, say for example, entrenched or resistant staff cultures. This in turn is likely to have the effect of incentivizing governors to stay in the same prisons for longer tenures, and to strengthen the collective profile of the governor profession. These are all entirely probable dynamic effects which flow from small yet focused changes in political prioritization of rehabilitative outcomes.

Another sign of change was the decision in December 2010 to transfer Birmingham prison, one of the largest and busiest locals, into private sector management. This seems very much a continuation of NPM principles of market testing,

and it is likely to have major impact on the system as a whole. We have seen how benign resistance to market testing and transfer has stymied market growth. Indeed, Labour governments have possibly been more inclined to appease union resistance than Conservative governments, and this decision by the new coalition is a clear sign that there is willingness to challenge the POA in one of their ‘stronghold’ prisons. As the *problematique* suggests, the breakdown of resistance to competition in the system is likely to have commensurate effects in terms of reducing obsolescence and redundancy in the system. As we have seen, Birmingham prison has been an important hub prison for distribution of prisoners nationally, and it is conceivable that G4S, the new contractor, would want to use this hub position to look at more efficient and effective ways of processing prisoners, their files, and their belongings, around the system. If a large London local prison is market tested and transferred, then this would increase pressure on the system to modernize logistical and information systems for prisoner transfer. Through such processes, obsolescence and redundancy can potentially be ironed out of the system.

Digitization of the main prisoner information system has been slow and heavily criticized (NAO, 2009), and has been part of a general culture of technological obsolescence throughout the last thirty years. In 2010, digitization took a major step forward through the full integration of an online database system (known as P-NOMIS) which replaced an archaic 1980s-built DOS system for case management of individual prisoners. For the first time, all public sector prisons were able to access information about any prisoner in the national system. Practically all governors and staff acknowledged this would radically improve the way in which services can be delivered to individual prisoners. Again, we see how reduction in obsolescence can feed back positively into what managers and staff deem possible, which itself feeds into countering the coping mind-set. We must however be careful of painting too optimistic and deterministic picture of the effects of a new computer system. One experienced official described new constraints which come along.

The classic one is that the P-NOMIS system does not allow population management to know how many prisoners are serving what kind of sentences in prisons. It is impossible now to plan the population because it was never built into the spec. Every week I get prison population figures. I used to get them broken down by sentence. Up to 12 months, up to 4 years etc. That is now blank and has

been blank since last August (2010). And so research and development are spitting tacks. They are saying how on earth can we do population projections because we don't know the prison population. <sup>[#285]</sup>

A vital component of the *problematique* over the years has been the perception that the prison population is ever too high. This has underpinned a sense of fatalism throughout the system about what is possible in terms of rehabilitation, and it has perpetuated a sense of a system continually coping. Like many other governments before it, the coalition has undertaken a consultation on sentencing guidelines, and ways to reduce the prison population through alternative non-custodial means. In an era of fiscal austerity, the current rehabilitation agenda is as much to do with saving public finances as it is to do with achieving rehabilitative outcomes *per se*. The cases of rioting across urban centres in the UK during the autumn of 2011, however, served as a reminder of the uncertainty of demand-side pressures on the system, and latent inclination in governments to resort to inflating the short-sentence prison population as a reactive sanction for deep-seated and complex social problems. It is in the nature of the system that it is able to react and cope with crises such as this, and it was able to ride out this short-lived storm. It seems necessary however that the system will need to see some form of reduction (however, gradual) in the prison population in order for coping cultures to be alleviated and for some degree of constructive slack to pervade the system. Although managerialism dictates that the system must be run at close-to-tolerance levels, there has got to be some element of recognition that demand-side measures are helping to stem the flow of offenders into the system. It is not enough to will this change, or to make public pronouncements about it. There must, it seems, be some degree of actual reduction for positive complementarity to kick in. The fact that the prison population has risen to more than 88,000 by the end of 2011 does not reflect well.

Constrained autonomy applies to all groups of actors in the system. The extent to which a political leader at the top of the system can impact change must therefore be seen in this context. Clearly, however, political leadership plays an important part. It is interesting that the Minister of Justice at the time of writing this, Ken Clarke, has credentials apparently suited to the task of building complementarity in the system. He is a pragmatic and charismatic figurehead, and in the twilight of his political career, has little (arguably) to lose. Indeed, as the former Home Secretary who was closely implicated in decisions to reverse many of the progressive measures in the 1991

Criminal Justice Act, he may likely have a personal stake in presiding over a reform to the system. There is however no guarantee that Clarke will be able to resist being moved on and replaced by a less charismatic and less pragmatic minister whose ambitions lie elsewhere. If he is unable to demonstrate transformative outcomes (and the continued upward direction of the prison population does not bode well), then it is likely that enthusiasm for a ‘rehabilitation revolution’ will start to wane. That said, if complementarity can be built and chronic capacity stress can be alleviated, then the dynamic effects of this on subsequent ministers is likely lead them to view the systemic challenges less fatalistically.

The last thirty years of the prison system has shown that speculation about political futures is fraught with unexpected twists. It is perhaps safer to think about the future of the whole system. These aggravating and compensating factors have been systemic over the years, yet the system itself has been resilient and actors within have found ways to adapt and flex in order to make the thing work. Benign resistance, coping, and obsolescence are all deep-seated properties, which go beyond the capability of one politician or one government to change in a short period of time. Doing small but radical things to change the complexion of different factors in the *problematique* can signal intent and act as catalysts. But, as we have seen, constrained autonomy requires that complementarities are built into the system in order for change to become widespread and sustained over the longer term.

It is tempting to see periods of major political reorientation such as the ‘rehabilitation revolution’ in terms of new horizons. The problem is that the prison system over the last thirty years has seen the dawn of several new horizons – post-May (1979), post-Woolf (1991), post-Carter Mk 1(2003) – only for optimism to dissipate and for the chronic condition to reappear. The NPM paradigm throughout the 1980s and 1990s offered exactly this kind of renewed optimism for transforming inefficiency and waste in the public sector. Yet, the prognosis at the end of the 2000s has been that NPM has been enigmatic, and in many ways, contradictory in its impact on the prison system. New emergent paradigms such as ‘digital era governance’ are likely to be just as integral yet also just as susceptible to the complexities of the system, and the predicaments facing actors of having to operate within. As we have seen, the scale of ambition to join up and re-engineer policy and services around individuals, is often completely at odds

with the capability and the capacity of the system. Furthermore, obsolescence can actually be perpetuated by forcing dysfunctional systems to cope with more ambitious policy goals. Thirty-odd years of NPM may have brought the prison system to this point of apparent transition, but it is a fallacy to think that a brand new paradigm will come along and replace the old one, and make the chronic condition go away.

Prisons may be *sui generis* institutions, but this idea that chronic conditions are functions of system equilibria can easily be applied to other core areas of public policy. The insight here must be that technical or specific problems in large public policy systems are signs or symptoms of more in-depth governance arrangements, how they are aligned, and how these alignments define the nature of equilibria in the system. These are signs and symptoms of chronic dysfunction in the governance of public policy systems. They may exist in the system and impinge upon the way the system functions. They may work their way into normalized cultures of the system and operate as justifications and rationale for sub-optimal outcomes. In all these senses, they are not be ideal. But they sustain because they are, for a whole host of reasons, sustainable.

We see examples of chronicness across many other core areas of the state. They are not necessarily stories of policy or service delivery disasters, policy fiascos, or catastrophic breakdown, but rather stories of striking obsolescence, conspicuous lags in technologies or processes, or problems that never really go away. None of these are fatal or crippling. They rarely lead to abolition of the policy and administrative apparatus which maintain them. But they are serious enough for the system to have to cope, adapt, and compensate. Every so often they may result in acute crisis or serious even fatal outcomes. And looking more deeply into the causes of acute failure, we often see that they are linked to more deep-seated yet manageable ongoing chronic dysfunction. Indeed, governments and ministers often announce reviews and declare new horizons, only for the problems to linger on in modified or evolved forms.

Chronic capacity stress is visible in all sorts of ways. We might read about insufficient numbers of frontline police on the streets during major riots, and wonder why this should be case in an era of increased public expenditure on policing and continual commitments by governments to move resources to the frontline and reduce the back office burdens on police forces. We might read about ageing and dysfunctional information systems in social security administration, and wonder how it can be that the

vast majority of the system's correspondence is still carried out on paper, despite considerable investment in e-government and IT transformation during the last fifteen years or so. We might also read about huge and costly defence procurement projects which are delivered way over budget and deadline, and appear to show quite striking degrees of obsolescence in terms of how they fit into a changing world of military and strategic defence requirements. All of these and many more are cases of large public policy systems incorporating different types of CCS, operating in broadly manageable and acceptable ways, yet somehow doing so despite themselves. I argue that all of these and many more can be analysed through exactly the same style of *problematique* as the one used in this research. They would highlight similar countervailing dynamics which aggravate and compensate, and which allow the system to function in one way or another under stress. Furthermore, individual actors in all of those systems would experience similar types of constrained autonomy on their choices and actions, thus feeding into and sustaining CCS. The condition of prison crowding has provided the in-depth empirical substance for pulling apart and understanding the dynamics of a chronic condition, the likes of which appear in many forms and guises across modern public management.

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<sup>123</sup> Former prison governor and senior official in the Prison Service [<sup>#275</sup>]

<sup>124</sup> Hobhouse and Brockway (1922) write that 'the declared objects of the change from local to centralized administration were two: first, the application to all prisons of a unified system of punishment (calculated, it was hoped, to repress crime) on the lines of the code contained in the 1865 Act; and secondly, greater economy in public expenditure, secured more particularly by a large reduction in the number of prisons' (p55).

<sup>125</sup> This has been illustrated throughout many of the conversations I have had for this research. I found a nice illustration of this while on a visit to Manchester prison. I asked a member of the administrative staff how long she had worked at the prison. She told me that she had been there more than twenty years. 'Oh so you must have been here during the riots in 1990. What was that like?' I asked. 'I'm not really sure really', she replied, 'I was off that week'.

<sup>126</sup> I have encountered many eccentric things during my visits to public sector prisons. Arriving at Norwich prison, for example, it was not entirely clear to me where the main gatehouse entrance was located. There were no signposts or obvious indicators. I found a large wooden gate which I thought might be the gatehouse, and knocked on a wooden hatch. Some minutes later, the wooden hatch opened, and a voice asked me what I wanted. I replied that I was here to see the governor. The hatch shut immediately, and stayed shut for about 5 minutes with further word or instruction. It then opened again and I was admitted into the prison. It turned out that that had indeed been the main gatehouse. A member of staff explained that they had been 'waiting for a new one for years'. Arriving at Dartmoor prison, I was greeted at the main gatehouse by a prison officer on reception duty whose hand was wrapped in a large and heavily blood stained bandage. As he was collecting my valuables, I asked whether he was alright, and he replied that he had done himself an injury the day before but had not had a chance to clean up the wound.

<sup>127</sup> I have used the more generalist term 'managerialism' to encompass the main aspects of NPM, but I use these two terms synonymously throughout this thesis.

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<sup>128</sup> In their study of cycles of centralization and decentralization in private sector firms, Nickerson and Zenger (2002) argue that firms can be ‘efficiently fickle’, by finding ways to oscillate consistently between these two extremes of organizational structure. In uncertain environments, this allows them to stay ‘close enough’ to optimal forms of structural design, without ever actually achieving optimality. Roberts (2004) draws on Nickerson and Zenger to make a similar argument in his study on the modern firm.

<sup>129</sup> Inspectorate reports are widely seen as influential on governors and their career prospects. And in the last ten years, the Inspectorate has increased its unannounced inspections to two in every three. <sup>[#286]</sup>

<sup>130</sup> In the year leading up to the general election in May 2010, both Conservative party and Liberal party published major reformist plans for the penal system. In 2008, the Conservatives published ‘Prisons with a Purpose: Our Sentencing and Rehabilitation Revolution to Break the Cycle of Crime’, which focused specifically on the need to look at the problem of recidivism as a complex and systemic one, and refocus prisons around rehabilitative goals. This was supplemented by major pieces of research carried out by think-tanks affiliated to the Conservative Party, such as the (CSJ, 2009) and (Chambers, 2010).

<sup>131</sup> A white paper *Breaking the Cycle* published in December 2010 has shown signs that value-sets are being recalibrated back towards rehabilitative goals. The Minister for Justice, Ken Clarke, has talked in high profile terms about delivering a ‘rehabilitation revolution’.

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## *Annex A*

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### **Research Design and Methods**

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It is in the nature of prisons that they engender strong views and emotions, conventional wisdoms and folklore, and competing perceptions about right and wrong. As this research has tried to show, it is a system and a structure which is held together by equal and opposite dynamics continually acting on each other. As one former senior official put it, ‘there has to be tensions. Tensions create dynamism. If you’ve got those tensions in place, it does make the system work. And the Service is riddled with tension’.<sup>[#287]</sup> It is this idea of aggravating and compensating tensions which has been at the heart of this research. Prison crowding can be seen as an archetypal example of chronic capacity stress (CCS), a function and an outcome of the equilibria formed between these countervailing tensions. CCS means that the system neither completely excels nor completely fails in its functions, but rather it sustains what we might see as sub-optimal yet acceptable levels of performance and outcome. It finds way of coping, adjusting, and indeed evolving, in ways which, by implication, sustain the condition. In order to understand crowding in this way, we therefore need a research design which looks at the system as a whole, and understands the characteristics of prison crowding and CCS as a function of dysfunction in the governance and equilibria of the system over time.

#### **A1 Research design**

Most social science research involves an essential challenge to maximize leverage of explanation (King et al., 1994). Leverage, King et al. point out, can be summarized as ‘explaining as much as possible with as little as possible’ (p29). Contained in this goal of maximizing leverage is another constituent or implied goal to achieve parsimony of explanation. Parsimony, in this sense, involves pairing down causal explanations to be as

simple as possible. As King et al. argue, however, parsimony is ‘a judgement, or even assumption, about the nature of the world’. By this they mean that ‘the principle of choosing theories that imply a simple world is a rule that clearly applies in situations where there is a high degree of certainty that the world is indeed simple’ (p20). Scholars in physics, they suggest, seem to find the concept of parsimony appropriate, as causal effects are seen as more easily modelled between dependent and independent variables. Biologists, however, often think of the concept of parsimony as ‘absurd’ (p20), because of inherent adaptive and evolutionary capacity of biological systems. Inherent in this argument is that it is not always possible (or advisable) in social science to assume simplicity about the way in which the world works. As King et al. (1994) point out, ‘we should never insist on parsimony as a general principle of designing theories’ (p20). They argue therefore that ‘all we need is our more general notion of maximizing leverage, from which the idea of parsimony can be fully derived when it is useful’ (p104). In short, complex situations do not always lend themselves to parsimonious explanations. Parsimony must therefore be found in the way we design models to disentangle and simplify complex empirical realities.

The nature of complex problems is such that it is not always possible to conceptualize explanations in terms of direct and linear relationships of causality where independent variables act explicitly on dependent ones. Chronic conditions may involve more nuanced, composite, indirect, adaptive, or non-linear effects which undermine the goal of parsimony and require more sophistication in terms of achieving leverage. Critics have turned to the idea of the ‘problematique’ to articulate complexity. As Warfield and Perino (1999) point out, this idea ‘appears as the consequence of a steadily growing collection of problem areas which, over time, begin to run together and create, ultimately, a heavily interconnected group of problems’ (p223). The consequence is that the ‘relationship is typically one of aggravation rather than causality since modern societal issues are not readily reduced to simple cause and effect relationships’ (p221). Whether it is always the case that problems slowly build up and get worse is not clear. Empirical observation may suggest sometimes that problems can simply reside in systems, remain stable and manageable. The idea of the *problematique* implies drawing out and tracing component parts and the inter-relationships, which sustain the overall problem.

From the outset of this research, I have framed crowding as a chronic condition which has resided and remained in the prison system. As considerable amounts of evidence in this thesis show, it can be and is seen as having chronic characteristics. If this is the case, then it should be possible to set the issue up as a kind of *problematique*, and disentangle the competing or interrelated dynamics which sustain it. This is the essence of the holistic approach to the research and to the issue itself. In doing so, I have treated the prison system as a kind of ‘super-organization’ consisting of various tiers and stages, the governance dynamics of which combine and conspire to sustain the chronic condition. The system, as it is termed here, therefore incorporates:

- *Government and politicians* from No 10 and the Cabinet, Home Secretaries, Prisons Ministers, oppositions spokespeople, and members of parliament;
- All *executive management officials* in the Home Office (or since 2007, the Ministry of Justice), the National Offender Management Service (since 2004), the Prison Service (since 1993), and the Prison Department as part of the Home Office (before 2003). This incorporates all top officials and senior management responsible for prisons;
- *Prison governors, prison officers, and professional bodies* representing the interests of governors (Prison Governors Association or PGA) and prison officers (Prison Officers Association or POA);
- *Audit, inspection, and campaigning bodies*, particularly the Prisons Inspectorate, the Prisons and Probation Ombudsman, Independent Monitoring Board, Prison Reform Trust, and the Howard League;
- All *private sector prison operators*, currently Serco, G4S, Kalyx, and the Geo Group;
- All *third sector or charitable sector organizations* working in or with prisons to support prisoners during their sentence or after release; and
- *Prisoners*. I have not focused directly on the role or perceptions of prisoners in the system, and have not systematically sought to canvas the views of prisoners for this research. I have talked to a wide range of prisoners anecdotally about life in prison during my visits to prisons, usually during escorted walk-rounds led by the governor.

The research design is set up to allow probing at the issue at different points in the system, examining different perceptions and empirical realities across the system, and ultimately, to put the pieces together in such a way as to explain the phenomenon as a whole.

The research covers thirty years of the prison system. In political terms, the start point of 1979 was chosen as it marked an important political watershed with the new Thatcher Conservative government. It also coincides with the commissioning and publication of one of the most in-depth and detailed reviews of the England and Wales prison system, known as the 'May Inquiry' (HO, 1979a), which set out a wide-ranging agenda for modernization and improvement of prisons. The research period covers all of the Thatcher and Major Conservative governments, and practically all of the Blair and Brown Labour governments. This gives an opportunity to look at change in the public policy and management of prisons over a long run period. Thirty years also encompasses important eras of change in public sector management styles associated with the rise of managerialism. The emerging dominance of managerialist approaches to public management has had a significant impact on how capacity stress has been seen over the years.

The decision to limit the scope of the analysis to the England and Wales prison system is simply to focus in depth on the chronicness of the problem, allowing space to examine deeper dynamics making up the *problematique* of CCS in prisons. Prison crowding has been a common feature in many systems around the world, and seminal comparative literature has underpinned the approach in this thesis (see, for examples, Downes, 1988; Cavadino and Dignan, 2006; Lacey, 2009). Although comparative analysis of prisons systems internationally can offer useful insights into why crowding takes place in some jurisdictions and not others, the specific topic of CCS required a dedicated single-system approach. The dynamics of chronicness, I argue, are intrinsic, and although they may be contrasted by comparative approaches, they are themselves functions and outcomes of their own system. This does not in any way undermine the value of comparative studies of prison systems or crowding. Indeed, I hope that many of the underlying explanations to crowding in the England and Wales system will be applicable in other jurisdictions.

This is a piece of in-depth research about the prison system. I have not looked in any detail at other systems, particularly sentencing and the judiciary, or those relating to legislative, political, or socio-cultural determinants of demand for prison capacity. Clearly, the prison system itself has a major impact on the level of demand for prison, through quality and effectiveness of its activities and its ability to reduce rates of reoffending and serial incarceration. It is also misleading to look at the characteristics of a prison system completely separately from those other systems which impact on it. Trends in demand for prison are therefore covered in order to contextualize activities to set up the system appropriately on the supply side. One former senior official summed up the scope of this work nicely as follows:

I think as a focus for study, prisons are self-contained enough for you not to feel that you have to go looking at the penal system as a whole. Obviously you can't look at prison without taking into account the judiciary and the pressures of public opinion of ministers, and how ministers are affected by them, and how that feeds through into prison management and the use of imprisonment. <sup>[#289]</sup>

The decision to exclude issues around sentencing and wider social determinants of demand for prison capacity may be controversial. Throughout the many interviews carried out for this research, discussions have frequently returned to demand-side themes such as sentencing, the nature of political rhetoric on crime and punishment, and attitudes on the wider use of prison in society. It is difficult to overlook the strength of this inclination to look to the demand-side for solutions to crowding, and as the analysis shows, it has been an important factor in accounting for the tendency of the system to sustain capacity stress. I have not attempted any kind of normative discussion on the 'correct' size of the prison population, or wider societal or policy determinants of the size of the prison population over the years.

Neither are issues around policy, administration, and viability of alternatives to prison are not covered in any great detail. Clearly, the availability and credibility of non-custodial options for punishment, such as community punishments and fines, have a direct impact on the level of demand for prison capacity, however they form of a much wider topic of study around probation, parole systems, and other aspects of policy and expenditure on these areas. I have however conducted a small number of interviews with senior probation officials in order to canvas their views on the prison system from the

perspective of probation. Again, like topics of sentencing, use of prison, punitive cultures in society, while worthwhile and valuable as a subject of research, they can form only a peripheral part of this study on the prison system. There are however important aspects or dynamics within the prison system, which impact on the extent and viability of use of community punishments, and these in turn impact on demand for prison capacity.

## **A2 Interviews and other qualitative research**

This research would not have been possible without formal approval from the National Offender Management Service (NOMS) in June 2009. This involved completing extensive research application forms and having the proposal reviewed and agreed by NOMS National Research Committee (NRC). I am grateful to the Chair of the NRC, Dr Susan Wishart, for her support with this process. Research approval transformed the quality of access to the prison system. Prior to approval, prison professionals proved extremely reluctant to agree to be interviewed, apart from a small number of officials who were inclined to overlook the lack of formal research approval. One of these more intrepid governors told me that most people ‘wouldn’t speak to you informally. I do because I don’t mind. But most people probably wouldn’t’.<sup>[#290]</sup> Some governors expressed this in rather more extreme terms as seen in a response I received from one experienced local prison governor, ‘your research is being considered by Prison Service HQ. You will be informed when a decision is made. Until such time as agreement is given by HQ, no research can be carried out’.<sup>[#291]</sup>

I have relied heavily on evidence and views collected from 120 formal interviews carried out with a wide range of politicians, senior officials, prison professionals, private and third sector providers, senior members of the judiciary, probation, and selected academics. Interviews were conducted during the period from January 2009 until April 2011. From January to June 2009, I conducted around 20 preliminary interviews with former senior officials and former governors. I found the retired governor network a most useful and enthusiastic source of experienced officials who had in-depth knowledge of the prison system across the thirty years covered. These early conversations were invaluable as a means of formulating early views on the nature of

crowding and CCS, collecting stories on the state of prisons during the 1970s and 1980s, and shaping interview technique.

**Table A1** above gives a breakdown on interview coverage across different areas. One strong characteristic of the prison system is that governors have typically started their career as prison officers ‘on prison landings’, and have worked their way up to ‘governing governor’ level, and have spent time working in Prison Service headquarters in policy or coordinative roles. Of 120 interviews carried out, 62 of these interviewees had had experience as governing governors or deputy governors. Similarly, 61 out of 118 interviewees had had experience working at HQ, and 38 had worked at the very highest level with politicians and Ministers. Thirteen interviewees had done all three roles.

**Table A1: Breakdown of different types of interviewees covered in this research**

	Number	Per cent of total interviews
<b>TOTAL INTERVIEWS CONDUCTED</b>	120	100
<b>Prison professionals</b>		
With ‘governing governor’ or ‘deputy governor’ experience	62	52
With experience of working at management level in the Prison Service (central or regional)	61	51
With experience of working at the highest political levels on prison matters ( <i>includes Permanent Secretaries, policy staff, Prisons Board</i> )	38	32
With experience at all three levels above ( <i>i.e. those who have risen through the ranks from governor to senior official</i> )	13	11
<b>Politicians and Ministers</b>		
Former Home Secretaries	6	5
Former Ministers with responsibility for prisons	6	5
Other politicians	1	1
<b>Private and third sector</b>		
With experience of operating, managing, or providing support to private sector prisons	25	21
<b>Other key groups</b>		
With experience of prison inspection or audit work / or running prison reform groups	11	9
Senior judiciary / magistracy	5	4
Chief Probation Officers	4	3

In selecting interviewees, the objective has been to ensure a reasonable spread or coverage across the last thirty years and across different levels in the systems. At senior political level, I have interviewed 6 out of 12 Home Secretaries who have served since 1979 (2 of the 12 are deceased) and 6 out of 18 former Prisons Ministers. Interviews with senior prison officials have covered all but one former Director Generals since 1979 (1 is deceased). Many of those senior officials interviewed have had experience over at least twenty years working in the system, and have been able to talk about the development of the system over time. I have tried to cover governors with experience of managing all types of prisons in terms of security categories, geographical locations, male and female, specialist establishments, and size of establishment. I have also covered governors at different ages, from one or two impressively young governors, to those approaching retirement. Typically, also, governors tend to move around a lot, and so most were able to reflect on periods of their career when they had experienced capacity stress.

Around one fifth of interviewees have had experience in private sector prisons, either as contract directors or as senior executives in at least one of the four firms, Serco, G4S, Kalyx, and Geo. Most of these interviewees have come from the public sector, and were therefore able to talk about key differences across public and private sectors. I have also interviewed a small selection of senior judiciary, magistracy, and chief probation officers. All interviews have been semi-structured and have lasted anywhere between 45 and 120 minutes. The variation in interviews and conversations provided assurance that I was not being ‘fed a line’ from the centre. There was no sign at any point that governors had been briefed or warned. In fact, it was quite the opposite in that most governors were open and frank, and on occasion, commented on the therapeutic nature of the conversation.

I have visited 29 prisons in total, including locals, closed training prisons, and open prisons (see **Table A2**). Included in this are both male and female establishments, and six prisons in the private sector estate (two each run by the three main contractors, Serco, G4S and Kalyx). In the initial stages of identifying governors to speak to, I worked up a list of prisons which covered regional variations and different functional types. Prison visits have often included an accompanied tour of the prison. Walkabouts have afforded many opportunities to stop and talk to staff and prisoners about their

experiences in the prison. Most of these conversations were conducted in the company of the governor, and hence, had to be interpreted in that light. There are no quotes included in this thesis from anecdotal conversations with staff or prisoners. However, conversations from walkabouts were conscientiously noted (although not recorded), and these conversations and notes form a rich basis for much of the analysis in this thesis.

Walkabouts with governors provided an invaluable insight into the physical conditions inside cells and communal space in prisons. Commonly, I would ask governors to show me the oldest or most run-down wing or set of cells, and they were almost always willing and able to do so. Governors were also generally willing to knock on a cell door and ask the prisoners inside to explain their own views on prison capacity, conditions, practices, and general observations about prison life. In many cases, prisoners would be unlocked for lunch or dinner, and this allowed opportunity for conversation with prisoners about standards of food, opportunities to leave the cell, and other day-to-day items. Again, these guided walk-rounds provided a rarefied form of insight into life inside prisons. Generally speaking, in most wings visited, conditions were not as bad as I might have expected, however, at no point did it ever occur to me to that prisoners were being pampered or indulged. Life doubled up with another prisoner in a single cell with a toilet behind a loose-hanging curtain (the norm in most local prisons) could never be considered 'ideal' living accommodation.

Table A2: List of prison establishments visited

Name	Type	Notes
Altcourse ( <i>Liverpool</i> )	Local (B) YOI and adult – capacity 1324	Purpose-built prison managed by private operator G4S. Opened December 1997. First prison in the UK designed, constructed, managed and financed in the private sector.
Belmarsh ( <i>east London</i> )	High security (A), Local (B)	Opened 1991, dual role of local prison serving Central Criminal Court and magistrates in southeast London, and high security Category A prisoners. Commonly holds convicted terrorists.
Birmingham	Local (B) – capacity 1450	Nineteenth century built (1849). Underwent large-scale modernization to add 450 prisoner places. Largest local prison in the estate, dealing with very high turnover of prisoners in busy metropolitan area.
Bristol	Local (B) / YOI – capacity 614	Nineteenth century built, with modernized features, in residential district northeast of the city centre.
Brixton	Local (B) – capacity 798	Nineteenth century built (1820), became a trial and remand prison for the London area in 1898. Minimal room for development of the site.
Bronzefield ( <i>Ashford, Middx</i> )	Local (B) female – capacity 465	Purpose-built prison managed by private operator Kalyx. Opened June 2004, takes remand and convicted female prisoners from courts.
Bullingdon ( <i>Bicester</i> )	Local (B) / Training (C) – capacity 1114	Opened 1992, ‘gallery design’, six house-blocks.
Channings Wood ( <i>Newton Abbot, Devon</i> )	Training (C) – capacity 731	Opened in 1974 on the site of a Ministry of Defence base. New house-block accommodation added in 1991 and 2004. Opened a therapeutic community in 2007.
Dartmoor	Training (C) – capacity 646	Nineteenth century built (1809). Became a criminal prison in 1850, and has considerable refurbishment during the last four decades. Run on a Service Level Agreement since a performance test in 2003.
Doncaster	Local (B) – capacity 1145	Managed by private sector operator Serco. Opened June 1994, takes remand and convicted prisoners from courts.
Dovegate ( <i>Uttoxeter, Staffs</i> )	Training (B) – capacity 860	Purpose-built prison operated by Serco. Opened in 2001. Includes a therapeutic community for sentence prisoners.
Erlestoke ( <i>Devizes, Wiltshire</i> )	Training (C) – capacity 470	Country house converted into a prison in 1950. Seven accommodation units, includes lifers.
Gloucester	Local (B) YOI and adult – capacity 323	Originally built 1782, substantially rebuilt in 1840. New YOI wing in early 1970s, plus new administrative blocks in late 1980s. Strong emphasis on restorative justice techniques.

(continued)

Name	Type	Notes
Guys Marsh ( <i>Shaftesbury, Dorset</i> )	Training (C) – capacity 578	Opened 1960 as a borstal, became a YOI in mid-1980s, began to receive adults from 1992. Now all-adult prison. Seven residential units, plus workshops.
Haverigg ( <i>Milom, Lancs</i> )	Training (C) – capacity 644	Opened 1967 on the site of an old RAF training centre. Cellular house-blocks and billeted accommodation.
Hewell ( <i>Redditch, Worc</i> )	Local (B), Training (B), Open (D) – capacity 1431	Three existing prisons Blakenhurst, Brockhill, and Hewell Grange clustered into one on the same site – opened in June 2008 in its amalgamated format.
High Down ( <i>Sutton, Surrey</i> )	Local (B) – capacity 1103	Opened in 1992, serves Guildford and Croydon crown courts and surrounding magistrates courts. Six house-blocks. Previously on the site of Banstead lunatic asylum.
Isle of Wight	High security (A), Training (B&C) – capacity 497	Three existing prisons Albany, Camp Hill, and Parkhurst clustered on one site. Parkhurst dates back to the early nineteenth century. Used as a high security prison from 1960s to mid-1990s.
Leeds	Local (B) – capacity 1004	Nineteenth century built (1847). Six residential wings, recent refurbishment to main gatehouse and accommodation.
Leicester	Local (B) – capacity 392	Built before 1870, appearance of 'medieval fortress', situated in the commercial and residential district
Lewes	Local (B) / Training (C) – capacity 723	Nineteenth century built (1853), with modernized features, new house-blocks and healthcare suite added since 2004. Serves East and West Sussex courts.
Leyhill ( <i>Gloucester</i> )	Open (D) – capacity 532	Originally opened as huttet accommodation in 1946. Partly rebuilt in the 1980s, with new accommodation units. Holds around 100 'lifers' in the final stages of their sentence.
Manchester	High security (A), Local (B) – capacity 1269	Opened 1868, held women until 1963. Became part of the high security estate in 2003. Its major riots in April 1990 led to its being put out to tender. Public sector bid won.
Norwich	Local (B), Training (C), Resettlement (D)	Originally built in 1887, a multifunctional local prison accommodating different types of prisoners. Some architectural features of the prison are archaic, particularly the main gatehouse entrance.
Nottingham	Local (B) – capacity 549	Opened in 1890, reconstructed in 1912. Changed from a Training (C) to local (B) prison in 1997. Serves courts in Nottingham and Derbyshire. Recent large scale expansion and redevelopment.

(continued)

Name	Type	Notes
Pentonville (north London)	Local (B)	Prototype 'radial' design prison opened in 1842, consisting of four blocks around a central hub. Considerable modernization to house-blocks.
Peterborough	Local (B) female and male – capacity 840	Modern, purpose-built prison managed by private operator Kalyx. Opened in March 2005, accommodates male and female prisoners, running Social Impact Bond pilot on reducing reoffending
Rye Hill (Rugby, Warks)	Training (C)	Modern, purpose-built prison managed by private operator G4S. Opened in 2001. Holds prisoners serving 12 months or more.
Shrewsbury	Local (B) – capacity 340	Nineteenth century built (1877), centrally situated behind Shrewsbury railway station, near to the site of the original 'Dana Gaol' medieval prison. One of the most overcrowded prisons in the system.

**Notes:** Prisons are recorded above according to dominant types. Local prisons commonly take remand and sentenced prisoners directly from courts, Training prisons take prisoners serving longer sentences who are allocated from local prisons. Open prisons take prisoners who are reaching the end of their sentences on resettlement plans, or low-risk short term prisoners allocated directly from local prisons. Security categories are denoted also in brackets, from Category A High security to Category D low risk and held in open conditions. All prisons were visited between June 2009 and February 2011.

I have carried out a limited number of focus groups for this research with prison staff, deputy governors, and private sector contract directors.

- Focus groups with prison staff were carried out at Leeds prison during March 2010. This involved three groups of around five prison officers of various grades and functions;
- With the help of a regional area manager and a deputy governor, I was also able to convene a focus group with around 10 current deputy governors from one region. As this focus group was non-attributable, I do not divulge the region. This took place during November 2009 at the regional deputy governors' monthly meeting. I am grateful to regional office staff for coordinating this valuable session;
- Finally, I was grateful to be invited by senior officials at Serco to attend a monthly contract directors meeting and convene a focus group discussion with contract directors on issues relating to capacity stress and comparative cultures

and performance across public and private prisons. This involved around 25 Serco directors. I am grateful to them all for allowing me to impose on their lunch hour and for their valuable insights. This took place in early 2010 at Serco offices in Hook, Hampshire.

In October 2009, I was able to spend a day shadowing prison staff in the reception area of a large London local prison, as prisoners were processed out in the morning, usually to court, and received in during the afternoon and evening, usually from court and on transfers from other prisons. This gave an invaluable insight into the day-to-day processes and impacts relating to prisoner movements, as well as the working cultures existing in this potentially fraught and stressful environment. Throughout the day I had opportunity to talk with prison officers, prisoner escort contractors, and duty managers, as well as talk informally to prisoners as they were processed in and out of the prison. None of these are included in the interview breakdown in Table A2 above. During the day, I witnessed the release procedure, widely seen as being typical of many large urban local prisons. I was profoundly grateful to the reception staff on duty that day for welcoming me and explaining the way things worked.

I was also grateful to staff at the Prison Service Population Management Unit (PMU) based at Prison Service HQ at Cleland House for allowing me to spend a day shadowing their work and gaining a fuller understanding of how the national population management system works. This proved an absolutely invaluable insight into the vital process of moving prisoners around the country in order to free up space in high pressure areas particularly London. None of the officials working in the PMU during that time are included in the interview breakdown above. This took place during September 2009 at Cleland House, former London offices of the Prison Service in Victoria, London.

All of these qualitative research experiences have generated a wealth of material in terms of background information, confirmation of perceptions and views, and useable quotes. All the quotations used in this thesis have been chosen to characterize or typify views or perceptions which have been commonly articulated by interviewees. They should be read in this light, somewhat abstracted from the specific individual who uttered them, and more in the way of broadly representative portrayals or depictions of

themes. All interviews were transcribed verbatim (nearly 1,000 pages), and this allowed to search of key terms when writing up specific themes. All interviews were done on a non-attributable basis, with commitments made to all interviewees that it would not be possible to link them or their institutions to specific statements or quotes included in this thesis. All interviews were recorded using MP3 and recorded material and transcripts stored securely on password protected in line with standard LSE data protection regulations.

There are numerous hazards in doing in-depth qualitative research in the prison system. Compared to most public sector systems, prisons tend to correspond to the archetype of what Goffman (1961) referred as ‘total institutions’, ‘a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life’ (p11). Traditionally, prisons during the 1970s and 1980s were seen as closed institutions, not just in an obvious carceral way but also in terms of transparency and accountability to society at large (Coyle, 1994). As former governor of Brixton prison, Coyle (1994) points out:

No one was sure how to unravel the Gordian knot. There was a conspiracy of silence, a collusion of refusal to admit that something needed to be done. Brixton was a terrible place [...] One of the most obvious signs of this conspiracy of silence was the secrecy that surrounded Brixton. For ten years virtually no press or media had been allowed inside the prison (p117)

In more recent years, prisons have become much more open and accountable institutions, subject to numerous vetting and auditing procedures, and with many different channels for ‘voice’ to expose the kind of inhumane or brutal practices that were commonly seen as widespread in previous decades. Nevertheless, however intensive these auditing and oversight procedures, prison by their nature remain inherently closed environments, making it difficult for researchers to triangulate actual standards and conditions of life inside. This is an inherent methodological consideration which filters through all qualitative research carried out for this work. Short of actual serving a sentence and living covertly on the inside for a decent stretch of time (a strategy which did cross my mind), this basic limitation will always exist to some degree.

As many interviewees have pointed out, prisons tend to be environments which emotionally charged. This applies as much to managers and staff as it does to prisoners themselves. Analogies or motifs describing the culture of emotion in prisons were common throughout interviews. Whether or not empirically correct, the frequency with which interviewees referred to the emotional content of prison work was striking. As one former senior official put it, 'in prisons, feelings are facts. Prisons are emotional places. Prison officers have a kind of jealous sibling relationship with the prisoners. And a child parent relationship with the governor'.<sup>[#292]</sup> Indeed, emotion is frequently expected from staff and their leaders. As one experienced senior official put it, 'the Prison Service is positively sodden with emotion. Unless you show emotion, you are not giving what they call visible leadership. I think it is unfair to expect that of them'.<sup>[#293]</sup> On the other hand, however, interviewees frequently commented on the extent to which prison staff and their managers would cover up emotion, particularly by resorting to humour often dark or self-deprecating. The same official above described this trait in another senior colleague.

He was one of those people who absolutely really cared. But you wouldn't often get him to admit this. He had developed a manner of jocularity and funny stories about the system, which were a coping mechanism for working in a system which couldn't ever meet his highest ideals for what the system should be doing.<sup>[#294]</sup>

This kind of emotional content and the heavy effects of the pressures which come to bear on those working in the prison system were articulated in interviews. Frequently, interviewees could refer to individuals who had felt the strain or had been affected by these pressures, as one experienced official put it, 'people have suffered over the years. I was on call for about seven years. You were constantly aware of the pressures'.<sup>[#295]</sup> Another suggested that 'it broke one or two people during my time. These were outstanding people, and it broke them. And they were brilliant'.<sup>[#296]</sup> Many interviewees referred to disillusion with the system. As one former public sector deputy governor and private prison manager suggested, 'after 20 years in the public sector, it was the best decision I ever made to leave. And I was committed to the public sector. Disillusioned would be the word...yes'.<sup>[#297]</sup> Others who have made the move to the private confirmed this view, for example, 'they are generally disillusioned with the Prison Service. A level of disillusionment with the Prison Service was astonishing'.<sup>[#298]</sup>

Finding ways to deal with the emotional and subjective content of interview material has been one of the key methodological challenges in this research. As an interviewer, it has been important to gauge and attempt to filter, where possible, emotional content in such a way as to arrive at some kind of measured or balanced conclusion about how things really are. It is also interesting how frequently certain motifs or metaphors have been used by interviewees. For example, many interviews equated (quite unprompted) building new prison capacity to building a new lane on a motorway – new supply tends to create its own demand. These are as much a reflection of conventional wisdoms deeply-rooted in the culture of the system as they are a reflection of actual empirical reality. Both conventional wisdoms and actual reality are relevant to this study of CCS, but at the same time, it is also important to be able to discern one from the other where possible.

### **A3 Collection of data and quantitative analysis**

The quantitative aspect of this research is designed to show broad patterns of change over an extended period of time. Rarely are performance and capacity of public services analysed in a systematic and in-depth way over such long periods, and practically all the figures and tables cover the thirty year period from 1979 to 2009. In most cases, the data had to be searched out and collated by hand, and more often than not, copied from PDF documents into electronic spreadsheets or statistics packages. This was time-consuming work which often required high degree of tolerance for repetitive tasks and dealing with the frustration of having to make sense of government statistics over a thirty year time series. Over the course of three and a half years of doing this research, I have compiled numerous electronic datasets from scratch, and have spent hundreds of hours doing this work. I know of no other academic or practitioner study which has compiled time-series data on the England and Wales prison system in such comprehensive form.

All prison and financial data incorporated in thesis has been compiled from extensive trawling through publicly available official documents, particularly Prison Department (1979 to 1992), Prison Service (1993 to 2007), and NOMS (2007 onwards) annual reports. These reports have contained data on annual prison capacities and populations, sourced from online archives of parliamentary publications at the British Library and LSE library. I downloaded thirty years worth of annual reports in PDF

format, and these have been a vital source of data and evidence throughout the thesis. From these reports, I was able to compile time-series datasets for capacity and population by individual prisons. Also, I compiled a thirty-year dataset for expenditure on the prison system and by individual prisons using financial accounts data from annual reports. I cross-checked against resource and capital budget data from Home Office Departmental Expenditure Plans. All financial data is reported in terms of 2009 prices.

Annual reports were trawled systematically for data on new prison places built each year and geographical location of these additional places. I compiled a dataset showing all new capacity added to the estate, and this forms the basis for data presented in chapters 2 and 6. Other performance indicator data series over the thirty year period, particularly those presented in chapter 3 were also based on extensive trawling of annual reports. These performance indicators were also supplemented by systematic searching of the online Hansard parliamentary written answers archive, a rich source of disaggregated data which again required many hours of compiling, cleaning, and standardizing.

Millbank online and Hansard online archives were used to search mentions of the term ‘crowding’ in relation to prison, the results of which are presented in chapter 5. This coding work took around three weeks in total to complete. For each year, I recorded all references to the term ‘crowding’ and variations of it, and key information about each reference was noted, including the speaker and the qualitative nature of the reference. Chapter 5 also contains a detailed coding of platform speeches by Home Secretaries from 25 out of 30 years. I sourced all Conservative Home Secretary speeches by visiting the Conservative Party archive at the Bodleian Library in Oxford, and spent two full days there, coding the prison-specific sections of these speeches into a spreadsheet. I sourced Labour Home Secretary speeches online, where available. In chapter 6, I use unpublished data on overcrowding drafts supplied directly by NOMS. In chapter 7, I use unpublished data on prisoner movements through Birmingham, again supplied by NOMS.

In chapter 3 I use the concept of quality-adjusted productivity to assess the extent to which performance of the prison system has changed over the years. I started by calculating a basic trend in total factor productivity, by dividing cost-weighted outputs by total inputs. Cost-weighted outputs consisted of the total average annual prison

population adjusted to take into account the different unit costs of accommodating different types of prisoners. Using cost breakdowns from Prison Service annual reports, I calculated cost weightings for six types of prison: local and remand, high security, closed adult, closed youth, open adult, and open youth. Inputs consisted of total operating expenditure of the system (excluding capital expenditure) adjusted to 2009 prices.

Chapter 3 also estimates quality-adjusted productivity which takes into account changes in seven key variables. Table 3.2 contains the values and calculations behind quality-adjusted total factor productivity. Seven indicators of performance quality (rows 1 to 7) were selected. Two indicators are associated with the security objective – [1] Total escapes from prisons and prison escorts per 1000 prisoner, and [2] Riots and disturbances index. Two indicators are associated with the decency objective – [3] Percentage of prisoners sharing cells designed for less, and [4] Self-inflicted deaths in custody per 1000 prisoners. Three indicators are associated with general management of the system – [5] Performance regime index, [6] Total police and court cells used per 1000 prisoners, and [7] Percentage of prisoners in prisons with more than 10 per cent free capacity. For each indicator, I looked at the total range of scores, from zero to the highest observable score, and divided this range into ten decile parts, assigning a score from 0.1 to 1 for each part accordingly. For example, data in Figure 3.3 shows that the number of escapes per 1000 prisoners ranges from almost zero to 15. We can divide 15 into ten equal deciles (Row 1 below), and assign a score from 0.1 to 1 for each decile (Row 2). The scale below shows this example. This technique was applied to all seven indicators. For the index data [4] and [5], two-year averages were used in order to smooth the data.

<i>Highest number of escapes assigned lower decile score</i>	<i>Lowest number of escapes assigned higher decile score</i>									
15	13.5	12	10.5	9	7.5	6	4.5	3	1.5	
0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1	

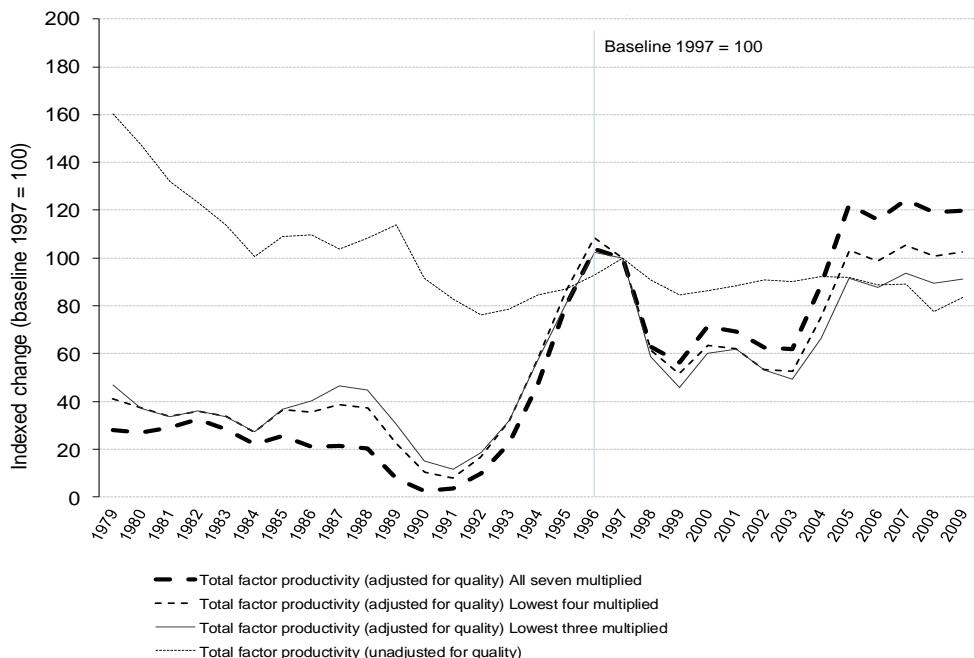
Once all seven indicators were completed (as in rows 1 to 7 of Table 3.2), I looked at possible ways to calculate a composite adjustor which could be multiplied by cost-

weighted outputs in order to take into account change in quality of performance over time. I experimented with three possible methods:

- Multiply all seven scores directly;
- Multiply the lowest four scores; *or*
- Multiply the lowest three scores.

For each of the outcomes, I smoothed the time series results by taking two-year averages for each year  $[(Y^n + Y^{n+1})/2]$ . The impact on each of the quality-adjusted productivity trend lines is shown in **Figure A1**.

**Figure A1 Alternative ways of calculating quality adjustment in total factor productivity**



In the analysis in chapter 3, I calculate quality-adjusted productivity by multiplying all seven scores directly. The impact of using these three different techniques is relatively fine-grained and does not impinge too heavily on the overall trajectory of the quality-adjusted productivity trend. By taking the lowest three scores, however, we see that the rate of increase in productivity rate over thirty years is marginally flatter, compared to the rate of increase if we multiply all seven variables. Whereas the rate of productivity increases roughly fourfold (from around 30 to 120) when we multiply all seven, it only

*Annex A*

increases around twofold (from around 45 to 90) if we only multiply the third lowest scores.

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## Annex B

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## Annex C

### Background on the prison system and prison population

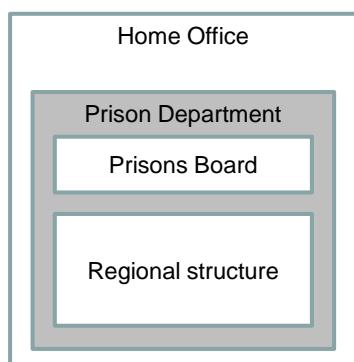
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This Annex provides some thumbnail administrative context of the prison system between 1979 and 2009. The first part describes four key stages of administrative structure of the system. The second part describes the functional organization of prisons, and gives some headline data on the number of prison establishments and average annual size of the prison population in each.

#### **(A1) The structure of prison administration.**

*1979 to 1993* - In 1963, the Prison Commission was abolished and administrative responsibility for prisons in England and Wales was transferred to the Prison Department of the Home Office. This arrangement remained throughout the 1980s,

#### **1979 to 1993**



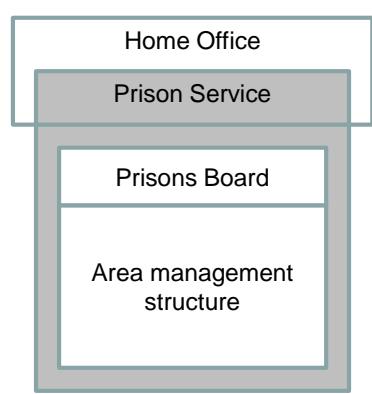
until the creation of the Prison Service as an executive agency of the Home Office in April 1993. The Prison Department was led by a Prisons Board consisting of a Director General and deputy, and other senior management officials in higher civil service grades. The Prisons Board and Director General reported directly to the Home Secretary. Throughout this period the central administrative capacity of the Prison Department was relatively small compared to later decades. This is

illustrated in Figure 2.8. A four-part regional structure of administration was in place, maintaining administrative oversight of the system and carrying out regional management of the population. Four Regional Directors were responsible for their own

regions. Throughout the 1960s and 1970s, prison governors had relatively high levels autonomy to run their prisons, and this diversity, broadly speaking, continued throughout the 1980s.

*1993 to 2004* – In April 1993, the Prison Department became the Prison Service, a new executive agency of the Home Office, in line with Next Steps reforms across UK central government from the late 1980s onwards (James, 2002 and 2003; Jenkins, 2008). In 1991, the Lygo report on the management of the Prison Department had recommended change along these lines (PD, 1991). The Prison Service became

**1993 to 2004**

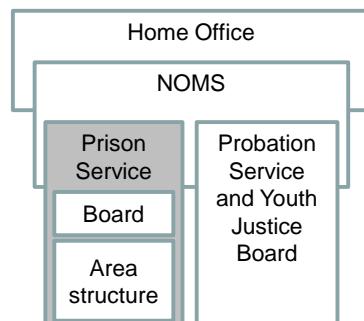


an independent agency with its own chief executive and senior management, its own budget determined by Home Office and the Treasury, and a range of performance targets through which it would be held accountable by the Home Office and parliament. In the Prison Service framework agreement, the chief executive was described as being both chief executive of the Prison Service and the Home Secretary's principal policy advisor. As Jenkins (2008) puts it, this role was both the 'agent and the principal at the same time' (p135). The chief executive also led the Prisons Board, with the deputy and the Finance Director as other key roles. From 1991, the regional structure of the prison administration had been reformed into a much more centrally-managed area structure, coordinated by Area Managers who were directly responsible to the Prisons Board. This marked the start of much stronger hierarchically structured management of the system, supported by the introduction of performance targets for prisons.

*2004 to 2007* – In December 2003, the Prime Minister's Strategy Unit published a report by Lord Patrick Carter on plans to reform the machinery of government in Home Office for managing offenders and reducing crime. This report dealt specifically with the prison system, probation services, and youth justice, and made recommendations for the creation of a new integrated agency, the National

Offender Management Service (NOMS) to bring together the work of these services. NOMS was created in June 2004 as an agency of the Home Office. A senior management layer was put in place, headed by a chief executive. NOMS management was responsible for commissioning services directly from the Prison Service, the Probation Service, and Youth Justice Board. In this sense, the structure and the management arrangements of the Prison Service remained in place, and responsibility for running the prison system remained with the Prison Service. This entailed a shift for senior management of the Prison Service from being directly responsible to the Home Secretary for the delivery of the prison system, to being an agent of supply of prison services to NOMS senior management. NOMS regional management was coordinated by Regional Offender Managers (ROMs), responsible for coordinating prisons, probation, and youth justice services. The area management structure of the prison system remained intact.

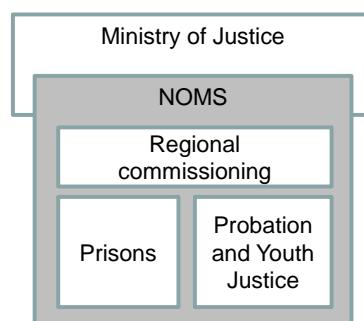
2004 to 2007



*2007 to 2009 – Reform to the NOMS structure came with the transfer of the agency to the new Ministry of Justice in 2007. This involved dismantling the previous commissioning structure in favour of a more integrated and ‘one agency’ arrangement. The Prison Service and Probation Service were effectively integrated as functional areas into the NOMS structure, with a new senior management arrangement which attempted to integrate the senior managements from the three constituent bodies. In reality,*

*however, this new NOMS senior management consisted almost entirely of former Prison Service managers. There were also reforms to the regional commissioning mechanisms. ROMs were abolished and replaced by new Directors of Offender Management (DOM), responsible for commissioning offender management regionally from prisons and probation trusts in their regional jurisdiction. DOMs therefore became accountable for regional offender management budgets, and responsible for all commissioning in their regions. The area management of prisons was abolished, and*

2007 to 2009



*Regional Custodial Managers (RCM) were created to oversee specifically prisons*

(public and private) in their respective regions. Whereas Area Managers had had considerable power with the Prison Service, RCMs found themselves operating in a more variegated and diffuse offender management environment, working directly to the DOM rather than the Director General of the Prison Service. This governance structure lasted throughout 2009.

#### **(A2) Functional specificity of prisons and prison populations**

It is important feature of the prison system that different prisons fulfil different functions across the estate. As the 1981 Prison Service annual report points out, 'there is substantial degree of specialisation of the prison system to meet the different needs, and this limits the extent to which capacity can be put to different uses in the system' (HMPS, 1981, p2). Throughout the last thirty years, the adult prison system has, broadly speaking, been relatively stable in the sense that there have been few major changes to the structure and functional roles of different prisons.

The vast majority of prisoners entering the prison system will be held first of all in 'local' prisons or remand centres. Local prisons have historically received prisoners held on remand, prisoners awaiting sentence, or newly sentenced prisoners. They serve a local catchment area of Crown and Magistrates courts, and receive all prisoners held on remand from those courts. Local prisons and remand centres therefore tend to be the 'first line' of the system, located in cities or towns in reasonably close proximity to their catchment area courts. Prisoners will usually remain in a local prison throughout their remand, their trial, and usually if they receive a short sentence, it is likely that they will serve their full sentence in a local prison. It is usually the case in London that short sentence prisoners are moved on to other local prisons outside of London in order free up capacity for new prisoners entering the system. In 1979, local prisons held on average around 19,200 prisoners in roughly 35 establishments. By 2009, this average population had risen to 31,300 in roughly 37 establishments. The number of separate local male establishments reached a peak at around 53 in the mid-1990s. See **Table C1**.

Once prisoners have been sentenced, local prison allocation staff will assess their treatment and security requirements, and decide whether they should be sent on to a prison in the closed training estate. For short sentence prisoners, it is likely that they will stay in the local prison estate. However, for longer sentence prisoners, they will usually

be allocated to training prisons. Each local prison will usually allocate prisoners to specific training prisons. Prisoners are allocated into one of four security categories, from Category A (high security) to Category D (low security and usually 'open' prison conditions). Most local prisons are Category B, and allocate prisoners to prisoners to closed training prisons in categories B, C or D. Allocation decisions are also determined by the range of regime programmes on offer at training prisons, and matching these to the needs of the prisoner.

The bulk of the prison population is therefore held in local prisons and remand centres, and closed training prisons categorized at levels B or C. It is interesting to look at the relationship between these respective prison populations over the years. Table C1 shows that in 1979 local prisons and remand centres held an average of 19,200 prisoners compared to closed training prisons at around 9,200. By 2009, the average local prison population had increased to 31,300 compared to closed training prisons at 28,700. The change in ratio here is interesting. In 1979, the ratio of training prisons to local prisons was 1 to 2.1. In 2009, this had reduced to 1 to 1.1. This illustrates the bulking up of the prison population in the closed training estate. Interviewees suggested that governors of local prisons liked to hold onto a percentage of sentenced prisoners rather than transfer them into the closed training estate as it tends to encourage stability in local prison cultures. Prison governors however have argued that often there is no suitable capacity available in the training estate to which these prisoners can be transferred.

At either end of the security categorization scale, there are high security prisons (Category A) and open or semi-open prisons (Category D). Over the years, there have been between 5 and 8 high security establishments (also known as 'dispersal prisons') in the system. High security (or 'Cat A') prisoners are usually taken directly to high security prisons, and are likely to serve most of their sentence in these establishments. For many governors, the high security estate is seen as the pinnacle of governing. Open and semi-prisons (Category D) have served as lowest security establishments in the estate. They have generally been used over the years to resettle long term prisoners back into the community. These prisoners may be transferred from the closed training estate towards the end of their sentences. During times of population pressure also, Category D prisons have been used to hold low-risk short-sentence prisoners, who are transferred directly from local prisons and remand centres.

In the adult female estate, there is a similar system of local and closed training prisons, as well as female open prisons used for resettlement. As Table C1 shows however, the numbers of female prisoners and establishments are considerably less, and hence there tends to be much less movement of female prisoners around the system. In 1979, around 600 prisoners were held in roughly 4 local prisons or remand centres in female local prisons, compared to 2,800 prisoners in roughly 8 establishments in 2009. In relative terms, this shows a much larger rate of increase in the number of prisoners. In 1979, roughly 1,300 female prisoners were held in the system compared to 4,300 in 2008.

The young offender system has been through comparatively more change than the adult system during the last three decades. The total average number of young offenders in custody in 1979 was around 7,200, and this rose throughout the 1980s, dipped at throughout the early 1990s, and has since increased gradually to around 8,500 young offenders in 2009. It is interesting that this has shown a much lower rate of increase compared to the adult population. Due to the lower numbers, and perhaps also the greater sensitivities of dealing with children in custody, we do see the same amount of systematic movement around the system. Young offenders have tended to be kept in one place, except for movement by necessity to mitigate disruptive youth or gang-related tensions. This period covers the last four years of the borstal system, and then subsequently five years of closed and open youth custody centres. In 1988, the young offender institutions (YOI) were introduced, and have since accommodated the bulk of young people in custody. Juvenile institutions were introduced in 2001.

Annex C

**Table C1: Estimated number of prisons and their average annual populations, by type**

	Prison Department inside the Home Office														Prison Service Executive Agency of Home Office								Prison Service in NOMS				NOMS					
	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	
<i>All figures in thousands 000s</i>																																
All adult prisons (male & female)	91	95	99	98	89	90	97	104	111	113	116	115	121	130	132	136	137	115	117	116	114	114	116	117	116	119	120	114	114	115		
Number of prisoners	42.0	41.8	43.3	43.7	44.8	44.8	47.6	48.3	49.2	48.9	48.5	43.6	45.2	44.2	45.4	49.9	51.6	56.7	63.6	65.4	64.1	64.3	67.0	72.0	73.6	74.9	76.6	78.8	81.0	81.8	83.7	
<b>Male adult prisoners</b>																																
Local prisons and remand centres	35	36	38	38	38	37	42	45	47	49	49	44	46	51	52	53	53	43	45	45	43	42	41	41	37	37	38	37	38	37		
Number of prisoners (L&RC)	19.2	18.3	18.9	19.1	19.0	18.8	19.8	20.7	21.6	21.3	20.4	17.0	17.9	17.4	18.3	20.8	21.4	25.1	28.3	29.0	27.9	26.8	28.1	30.1	29.3	29.4	30.1	29.9	31.2	31.8	31.3	
High security prisons (A)	6	6	6	6	6	7	6	6	7	7	7	7	8	8	6	6	5	5	5	5	5	5	5	5	5	5	5	5	5	5		
Number of prisoners (A)	2.0	2.0	2.0	2.1	2.1	2.5	2.4	2.4	2.5	2.7	2.8	2.9	2.9	2.9	2.9	2.5	2.7	2.5	2.5	2.5	2.5	2.5	2.6	2.7	2.7	2.7	2.8	2.9	2.9	3.0		
Closed training prisons (B&C)	30	33	35	35	25	26	28	32	35	35	38	42	44	46	50	52	51	47	47	44	43	44	41	42	44	47	48	47	46	46	47	
Number of prisoners (B&C)	9.2	9.6	10.6	11.0	9.7	9.7	11.1	11.6	12.2	13.0	13.9	13.9	14.6	14.4	14.9	16.0	17.1	18.7	21.0	21.0	21.0	21.6	21.3	23.2	25.3	26.6	27.5	27.9	28.1	28.7		
Open prisons (D)	9	9	9	8	9	9	10	10	9	10	10	10	11	13	12	12	13	11	9	10	10	9	8	8	8	8	7	7	7	9		
Number of prisoners (D)	3.1	3.2	3.0	3.1	3.1	3.0	3.2	3.1	2.9	3.2	3.2	3.2	3.3	3.2	3.2	3.3	3.3	3.5	3.3	3.3	3.1	2.9	2.8	3.2	3.3	3.2	3.2	2.5	2.7	2.9	3.6	
Semi-open male (Semi D)																										5	5	5	5	5	5	
Number of prisoners (Semi D)																										0.8	0.8	0.9	0.9	1.0	1.0	
<b>Female adult prisoners</b>																																
Local prisons and remand centres	4	4	4	4	4	4	4	4	6	5	5	5	5	5	5	5	6	3	4	4	5	5	5	6	7	7	9	9	9	9	8	
Number of prisoners (L&RC)	0.6	0.6	0.5	0.5	0.5	0.6	0.6	0.6	0.8	0.8	0.8	0.6	0.8	0.8	0.8	0.9	1.0	0.9	1.1	1.3	1.5	1.5	1.6	2.0	2.2	2.2	2.7	2.8	3.0	3.1	2.8	
Closed training prisons (B&C)	3	3	3	3	4	4	4	4	4	4	4	4	4	4	4	4	5	6	3	4	5	5	6	7	6	6	6	3	1	1	1	
Number of prisoners (B&C)	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.7	0.8	1.0	1.2	1.7	1.2	1.2	1.3	0.6	0.3	0.3	0.4	0.3	
Open prisons (D)	4	4	4	4	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2	2	2	2	1	1	1	1	1		
Number of prisoners (D)	0.4	0.4	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.3	0.4	0.4	0.4	0.5	0.5	0.5	0.4	0.4	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1		
Semi-open prisons (Semi D)																										2	2	2	2	2	2	
Number of prisoners (Semi D)																										0.4	0.5	0.6	0.6	0.6	0.7	0.6
Cluster prisons																										2	2	2	2	2	2	
Number of prisoners (CLUS)																										2	2	2	2	3		

Source: My analysis of Prison Service and NOMS data in annual reports.

*Background on the prison system*

**Table C1 continued**

	Prison Department inside the Home Office													Prison Service Executive Agency of Home Office							Prison Service in NOMS			NOMS						
	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<i>All figures in thousands 000s</i>																														
<b>Young prisoners (male and female)</b>																														
All YO and juvenile prisons	44	45	46	45	62	61	59	55	52	41	40	32	30	31	29	28	28	18	18	17	17	19	19	21	21	20	20	20	20	
<i>Number of prisoners</i>	7.2	7.3	7.6	7.2	9.6	9.6	9.7	9.0	8.3	7.0	6.4	5.2	5.1	4.9	5.0	5.2	5.4	5.1	6.2	7.0	6.8	7.5	7.5	8.1	7.8	7.8	8.0	8.4	8.5	
Closed and open borstals (male)	24	24	22	22																										
<i>Number of prisoners</i>	5.1	5.2	5.2	5.0																										
Closed and open borstals (female)	3	3	3	3																										
<i>Number of prisoners</i>	0.2	0.2	0.2	0.1																										
Senior and junior detention centres (male)	17	18	21	20	20	19	16	12	12																					
<i>Number of prisoners</i>	1.9	2.0	2.2	2.1	1.7	1.5	1.3	0.9	0.8																					
Closed youth custody centres (male)					29	29	31	31	28																					
<i>Number of prisoners</i>					5.1	5.3	5.7	5.5	4.8																					
Closed youth custody centres (female)					2	2	2	2	2																					
<i>Number of prisoners</i>					1.4	1.4	1.3	1.3	1.3																					
Open youth custody centres (male)					9	9	8	8	8																					
<i>Number of prisoners</i>					1.4	1.4	1.3	1.3	1.3																					
Open youth custody centres (female)					2	2	2	2	2	1	1	1																		
<i>Number of prisoners</i>					0.1	0.1	0.1	0.1	0.04	0.2	0.1	0.1																		
Closed male YOI										28	27	19	19	21	20	20	19	15	16	15	15	17	17	17	16	15	15	15	15	15
<i>Number of prisoners</i>										5.8	5.5	4.4	4.3	4.2	4.3	4.8	4.9	4.7	5.8	6.6	6.4	7.1	7.1	7.2	6.7	6.5	6.7	7.1	7.2	7.2
Closed female YOI										3	3	3	3	2	2	2	2	3												
<i>Number of prisoners</i>										0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1											
Open male YOI										7	7	7	6	6	5	4	4	3	2	2	2	2	2	2	1	1	1	1	1	1
<i>Number of prisoners</i>										1.0	0.8	0.8	0.7	0.7	0.6	0.4	0.4	0.4	0.4	0.3	0.4	0.4	0.4	0.4	0.2	0.3	0.2	0.2	0.2	0.3
Open female YOI										2	2	2	2	2	2	2	2	2	2											
<i>Number of prisoners</i>										0.03	0.04	0.03	0.03	0.02	0.03	0.03	0.03													
Juvenile institutions (male and female)																										2	4	4	4	4
<i>Number of prisoners</i>																										0.5	0.9	1.0	1.0	1.0

Source: My analysis of Prison Service and NOMS data in annual reports.

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